SITTING AS COURT OF IMPEACHMENT

JOURNAL OF THE SENATE

Tuesday, September 24, 1963

The Senate, sitting as a court for the trial of Articles of Impeachment against the Honorable Richard Kelly, Circuit Judge for the Sixth Judicial Circuit of Florida, convened at 9:30 o'clock A.M., in accordance with the rule adopted on September 9, 1963, prescribing the hours of the daily sessions.

The Chief Justice presiding.

The Managers on the part of the House of Representatives, Honorable William G. O'Neill and Honorable C. Welborn Daniel, and their attorneys, Honorable James J. Richardson and Honorable Leo C. Jones, appeared in the seats provided for them.

The respondent, Honorable Richard Kelly, with his counsel, Honorable Perry Nichols, Honorable B. J. Masterson, Honorable Harvey V. Delzer, Honorable Alan R. Schwartz and Honorable Thomas McAliley, appeared in the seats provided for them.

By direction of the Presiding Officer, the Secretary of the Senate called the roll and the following Senators answered to their names:

Askew	Covington	Johns	Price
Barber	Cross	Johnson (19th)	Roberts
Barron	Davis	Johnson (6th)	Ryan
Blank	Edwards	Kelly	Spottswood
Boyd	Friday	McCarty	Stratton
Bronson	Galloway	Mapoles	Usher
Campbell	Gautier	Mathews	Whitaker
Carraway	Gibson	Melton	Williams (27th)
Clarke	Henderson	Parrish	Williams (4th)
Cleveland	Herrell	Pearce	Young
Connor	Hollahan	Pope	

—43.

A quorum present.

Senator Tucker was excused from attendance upon the Sessions this day because of commitments made prior to the trial.

By direction of the Presiding Officer, the Sergeant At Arms made the following proclamation:

Hear ye! Hear ye! Hear ye!

All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the State of Florida is sitting for the trial of Articles of Impeachment, exhibited by the House of Representatives against the Honorable Richard Kelly, Circuit Judge of the Sixth Judicial Circuit of Florida.

By unanimous consent, the reading of the Journal of the proceedings of the Senate, sitting as a Court of Impeachment, for Monday, September 23, 1963, was dispensed with.

The Senate daily Journal of Monday, September 23, 1963, was corrected and as corrected was approved.

At the request of the Presiding Officer, Senator E. William Gautier of the Twenty-eighth Senatorial District offered the following prayer:

Our Heavenly Father, we invoke thy divine blessing on the members of this Court and on all those who take part in these proceedings.

We beseech thee, our Lord, to give us wisdom and understanding in our deliberations, and pray that thou will give us the courage to face our responsibilities and the humility to do unto others as we would have them do unto us. All this we ask in the name of our Lord and Savior. Amen.

SENATOR CROSS: Chief Justice, I would like to request to make a motion. I have it in writing and I will submit it to the Secretary.

I would like to move, sir, at this time, that an order be adopted by the Senate to the effect that the taking of pictures is prohibited in the Senate Chamber, whether in session or not, while the Senate is sitting as a Court of Impeachment.

CHIEF JUSTICE DREW: You've heard the motion made by Senator Cross. All in favor of the motion let it be known by saying "aye." Opposed "no."

The "ayes" have it; the motion is adopted and the rule is amended accordingly; that is, Rule 29 of the rules governing this Court of Impeachment.

You may proceed.

MR. O'NEILL: Victor O. Wehle.

Thereupon,

VICTOR O. WEHLE,

having been first duly sworn as a witness for and on behalf of the Managers, testified as follows:

DIRECT EXAMINATION

BY MR. O'NEILL:

Q Will you state your name, address and profession, please sir?

A Victor Wehle, St. Petersburg, Florida, Professor of Law at Stetson University, College of Law, and partially engaged in practice with my son.

Q How many years have you been engaged in the practice of law in Pinellas County?

A Since 1926, with the exception of ten years on the Circuit Bench.

Q What years were those that you were on the Circuit Bench?

A I was appointed in June, 1945, and went out of office in January, 1955.

Q Where did you receive your education to become an attorney at law?

A At Cornell University at Ithica, New York.

Q Were you engaged in the practice of law on or about the year 1960 in Pinellas County?

A Yes sir.

Q When did you become a Professor of Law at Stetson University?

A I have been a visiting lecturer there since 1954, when the Law College moved to St. Petersburg, and a full time professor for the last three years.

Q Do you know Richard Kelly, Circuit Judge of the Sixth Judicial Circuit?

A Yes sir.

Q Have you had occasion to have conversations with him?

A Yes sir.

Q What was the first date and first conversation after he became a Circuit Judge of the Sixth Judicial Circuit?

A I don't recall the exact date or the circumstances of the conversation. A purely social conversation a few months after he was elected.

Q State what was said at that time, sir.

A I don't recall. I think he merely expressed his satisfaction seeing me again. He had formerly practiced in front of me when he was first admitted to the Bar, and expressed his admiration for me as a senior member of the Bar. Perfectly pleasant and, to me, a very satisfying social conversation.

Q Did you have occasion while Judge Kelly was on the Bench to have or hear cases or handle cases before him?

A I have had, to the best of my recollection, three cases in front of Judge Kelly.

Q Did you find that those were handled satisfactorily or unsatisfactorily?

A As far as I was concerned, they were satisfactorily handled, even though I managed to lose one of them, but I blamed that on the Jury rather than on the Judge.

Q Did you have occasion to be involved in the case, the divorce case, Taylor vs. Taylor?

A I was involved in such a case, representing the wife.

Q Was there another attorney involved in that case?

A Yes sir.

Q What was his name?

A Edward Turville.

Q Will you state what happened in that particular case?

A The divorce suit which I brought for a wife against a husband, Mr. Turville representing the husband, heard before Judge Kelly. I finally secured a divorce for the wife and a reasonably satisfactory amount of alimony, considering the modest circumstances of the parties. As far as I was concerned, the results of the case were as satisfactory as can be expected in those type of cases. I think what you are referring to, however, is the fact that - - -

Q The exchange between Mr. Turville and the Judge. Will you relate those circumstances and what the exchange was?

A Mr. Turville, who was an able attorney and formerly Chairman for many years of the Republican County Committee of St. Petersburg, was ably defending his client and was endeavoring to ask a series of questions or put in testimony in behalf of his client, and Judge Kelly didn't see the pertinence of the questions, and Mr. Turville endeavored to tell the Judge. He said, "Judge, I don't believe you have clearly in mind what the purpose of my questions is, my theory of this case and of the defense." He said that several times before we adjourned at noon, and when we resumed after lunch, Judge Kelly said, "Mr. Turville, you have told me several times that apparently I didn't understand your theory of the case. I don't want you to tell me that again. I do understand it, and if you will suggest again that the Court doesn't fully understand what you are driving at, I will have to hold you in contempt." Actually, I don't believe the Court ever did understand what Turville was driving at.

Q Do you recall whether you or not, as the opposing counsel in that particular case, made any objections as to the questions propounded by Mr. Turville?

A I don't recall. It was about a year or so ago, and the incident made no particular impression upon me until I was asked about it yesterday.

Q Did you later, at the request of Judge Kelly, brief any law and write him a letter relating to that law on any subject?

A Yes sir.

Q Was it a case in which you were involved in, as the counsel for the plaintiff or defendant, or was it a case in which you were not involved in?

A The matter to which you are referring is the same one to which I have in mind. There was a letter written at the - - - or a report written at the request of Judge Kelly, regarding his rights or authority in certain contempt proceedings he was about to bring, or had brought against some attorneys in Dade City.

Q Do you recall on or about when this occurred, sir?

A Well, yes, sir, I have my file here.

Q Will you refresh your memory and give us the date and year, and state, in essence, what the question was to you from Judge Kelly, and what your response to the question or questions were?

A Yes sir, on the third, I believe the third Friday in March of 1963, I believe the 22nd of March, I happened to have a matter before Judge Kelly, an informal matter. It was a Friday afternoon, and after I had completed the discussion with him on that legal matter, he went into Chambers with me and told me that he had been having some problems with an attempt of some Dade City attorneys to recuse him in some litigation problems that had already been written up in the newspapers, and I was familiar with them from the newspaper report, at least. He asked me if I would be willing, as a friend of the Court, to give him my opinion as to what his rights were in the circumstances, and what the effect of these attempts to recuse him were. I told him I was always at the call of any court to act as friend of the Court, if I could be of assistance. He thereupon, said, "Well, to make it formal, I will write you a letter requesting that," which he did, and I have that letter here with me.

Q Will you please state what your response - - - what the question was, and the response to that question or questions?

A The letter itself was not particularly clear as to what he wanted, but he had discussed with me, and I knew what he wanted; and so, I researched the matter over the week end, and under the date of March 26, wrote him a report. I might say that his letter, asking me, as a friend of the Court, to advise him, showed that copies of it had been sent to Mr. Charles Luckie, to Larkin, Larkin & Goodson, and to Mr. W. Kenneth Barnes, all lawyers of Dade City.

MR. NICHOLS: Counsel, he's testifying from a letter; it's a short letter. Will you have him read it, please?

MR. O'NEILL: I don't mind him reading the letter; all I'm interested in is the request.

THE WITNESS: I'll be happy to read the letter.

MR. O'NEILL: If you want to ask him to read it on cross examination, Mr. Nichols, you might do that. I don't think it's necessary for Mr. Wehle to read the letter at this time.

BY MR. O'NEILL:

Q Did you respond to the question propounded and asked by you to be made, as to your research to Judge Kelly?

A Yes sir. What I was about to say was, because his letter to me had shown copies going to these various attorneys, I, in turn, sent copies of my reply to these attorneys, - - -

Q All right, sir. Now - - -

A - - - sending the original to the Judge.

Q Without reading your reply, state to this Senate, as a Court, the question propounded to you and the response that you gave Judge Kelly?

A Substantially this: First, he wanted to know if, in my opinion, and based on my research and previous experience and knowledge, if the fact that a Judge disliked or was prejudiced toward an attorney, if that was grounds for disqualifying the Judge. I advised him that the Florida Courts had held that a personal prejudice of a Judge against an attorney could be grounds for disqualifying the Judge. He then asked me if the suggestion of disqualification which had been filed by Mr. Luckie and, I believe, some other attorneys, together with the supporting affidavits and papers, was sufficient, on its face, to require him to disqualify himself, and his secretary, at his instruction, spent quite a bit of time copying or making a photostat of all the entire suggestion of disqualification, which I have here; it's a multi-page motion, or suggestion. I advised him that if the suggestion was sufficient on its face, in my opinion, the Judge had to disqualify himself, but that he had the right, under the Florida Supreme Court decisions, to at least examine the suggestion to see if it, on its face, complied with the requirements of the Statute towards disqualifying or recusing a Judge. He had also asked me if, in my opinion, the suggestion was sufficient on its face, and I advised him that, in my opinion, the suggestion was not sufficient, on its face, that the supporting affidavits had not - - - and other documents were largely based on hearsay, and, at the most, revealed some personal friction between the Judge and the lawyers; that, in my opinion, were not sufficient on their face to require him to disqualify himself but that, in my opinion, he could refuse to disqualify himself. I understand later the District Court of Appeal disagreed with me on that opinion, but it's not the first time they have disagreed with me.

Q All right, sir. What else did he ask you to research?

A He also asked me to research whether or not the charges made in the petition to recuse or disqualify him were contemptuous, and could be made the basis of a contempt citation against the lawyers or other parties who might have filed those charges, or sworn to the accompanying affidavits. I told him that, in my opinion, the things they had said about him were not contemptuous. When you disqualify a judge, you have to say some things about him that he doesn't like; if you liked everything about him, he wouldn't be disqualified, and I didn't think the things they had said about him were sufficiently vindictive or out of line to be considered contemptuous. However, I also went on to advise him that even if the language had been out of line, so that, ordinarily, it might have been considered contemptuous, that under a comparatively recent decision of our Florida Supreme Court, in the disbarment - - - or contempt proceedings against Judge Giblin, which had been instituted by Judge Milledge, down in Miami, about ten or twelve years ago, that the Supreme Court had ruled, in my opinion, that all these supporting affidavits and proceedings were privileged communications in a disqualification proceeding, and the Judge could not hold in contempt anybody who had, in good faith, presented the supporting affidavits, or made the motion, that he could not cite these men for contempt, no matter how strong the language.

Q Did you have a conversation relative to that particular point with Judge Kelly?

A Yes sir, I mailed him that report on March 26. A day or so later he telephoned me from Dade City, acknowledged receipt of the report, thanked me for it, and said that he disagreed with me. I asked him in what respect, and he said he thought he had the right to hold these men in contempt, and intended to do so. I advised him, "Judge Kelly, maybe these things, in the layman's mind, would be contemptuous, but our Florida Supreme Court has definitely ruled, in that second Giblin case," that he cannot hold a lawyer in contempt with those things, they are privileged.

"Well," he said, "yes, that's what that case seems to hold, but I have found another case" - - - and he gave me the citation - - -

Q Was that a Florida case?

A He said, "I've found a Kentucky case, I think it was in 224 Southwestern," he said, "Which is squarely in point, and says that you can hold a lawyer in contempt for these things, and I think that's a better-reasoned case than the Florida case."

Q Did he make any statement to you that he was going to ignore this Florida case and follow the Kentucky case?

A He said, "I think this Kentucky case is so squarely in line that I'm going to follow it and proceed with the contempt," or words to that effect.

Q All right, sir. Now, later on, did you have any conversations with Judge Kelly, with reference to this subject or any other?

A I may have had - - - I don't recall any specific conversation, except, shortly after the impeachment proceedings had been filed in the House - - -

Q That's the one I had reference to.

A I was in his office in Dade City again, arguing a motion for new trial in a case which I had lost, and after it was completed, he asked me to stay in the Chambers and discuss some problems with him, and he then wanted to discuss his concern over this pending impeachment which, I believe, was to commence the following week. This was just a few days before that; at which time he had not, as yet, secured an attorney, and, apparently, was planning on proceeding without an attorney, and I told him to remember the old adage about a man who acted as his own attorney - - - I won't repeat it here, but you lawyers will know the one I'm referring to - - - and I suggested the names of several attorneys for him to employ, or attempt to employ, and I understand he contacted some of them later, and was represented at the impeachment hearing before the House.

Q Did he ask you to testify at the House hearing, before the House Select Committee?

A Yes, he asked me at the time if I would be willing to appear if I was subpoenaed; naturally, I said, yes. He then asked me, in my opinion, if he were asked - - - if I were asked if he had handled the cases in which I had had in front of him in a judicious manner, what my reaction would be, and I told him that, as far as I was con-

cerned, the matters which I had personal contact with him had been satisfactorily handled, at least, as far as my side was concerned.

Q Did you actually come to Tallahassee, pursuant to the subpoena, during the time the Select Committee was considering this matter?

A Yes sir, I appeared here under subpoena.

Q Did anyone talk to you at that time?

A There was one of his attorneys, I think it was Mr. Lewis Hall, of Tallahassee, and also Judge Kelly, and also some of the attorneys for the House, the Impeachment Committee.

Q Did you testify?

A No sir.

Q Now - - -

A Apparently, neither side wanted me after they heard my story.

Q Judge Wehle, have you discussed or had discussed in your presence Judge Kelly's reputation amongst the members of the Bar as to how he handled the cases in his Court?

A I have heard numerous attorneys discuss it in my presence and with me.

Q Do you have an opinion, or do you know that reputation?

A Do I have an opinion?

Q Based upon those conversations. Do you know that reputation?

A I know his reputation amongst many of the lawyers, yes sir.

Q All right, sir. What is that?

A With one or two exceptions, the various attorneys who have discussed him with me, and they have been quite numerous from both Dade City and St. Petersburg, were of the opinion that he was an unstable character that did not handle himself in a proper fashion in the Court Room. I personally had seen little or no evidence of that except in that one divorce suit.

MR. O'NEILL: You may inquire.

CROSS EXAMINATION

BY MR. NICHOLS:

Q Judge Wehle, the memorandum that - - - oh, let me get back to that divorce case that you were handling, which you felt a little bit aggrieved about because of the attitude of Judge Kelly towards the other attorney. What was his name?

A Edward Turville.

Q Edward Turville?

A Mr. Nichols, I wasn't aggrieved.

Q All right, sir.

A It sort of tickled me.

MR. O'NEILL: Just a moment. We object to counsel cutting off the witness. He is trying to answer the question.

THE WITNESS: I think I have answered it.

BY MR. NICHOLS:

Q I believe you said that he was Chairman of the Republican Party?

A That he had been for some years in our county, no longer is, but a prominent Republican leader and just at one time for a short time, I was Chairman of the Democratic Committee in our county.

Q Well, the Judge was not showing any political favoritism towards the Republican who was before him, was he?

MR. O'NEILL: We object to the question on the grounds it is not pertinent to the issues involved here.

MR. NICHOLS: It has been charged that he was engaging in partisan politics.

CHIEF JUSTICE DREW: Overruled.

THE WITNESS: No sir, I never saw any evidence of partisan politics in his actions on the Bench nor, frankly, in his impeachment proceedings, despite what the newspapers refer to frequently.

BY MR. NICHOLS:

Q Thank you, Judge. Now, in the citations or in his letters to you asking you to do some research on this question about contempt in State Road Department vs. Aiken case, did he ask you to get any other attorney of your choosing to work with you?

A Yes, to this extent, Mr. Nichols. In the letter itself, as he told me, he had already spoken to several other lawyers. He liked to discuss his troubles with all the other lawyers, and he asked several of the other lawyers to write such opinions for him, and he said, "In order to make it a matter of record, I will have my secretary copy off the same letter I wrote the other lawyers and address it to you." So this was really a form letter he wrote.

Q It was addressed to you individually?

A Yes sir.

Q "For the reasons stated above, it is respectfully requested that you and any other attorney practicing before this Bar, who is of your choosing and willing to assist you, appear in this case as a friend of the Court in order that I be given the assistance your research and argument would furnish." Your research and argument was furnished?

A Yes sir.

Q So he had asked you to select anybody of your choosing?

A Yes.

Q He asked you to do the research?

A Although, as I told you, this is a copy of a form letter he had written several other lawyers, he told me; Mr. Earle, and Simmons, and the Simmons & Bussey firm. He had asked them the same thing.

Q Did it seem to be a sincere and conscientious endeavor to get the matter decided from a legal standpoint and to get the benefit of your research?

A I thought so.

Q Now, you wrote a memorandum, did you not?

A Yes sir.

Q Do you have a copy of the letter that he wrote you and your memorandum that you wrote back?

A I have the original letter he wrote me and a copy of my reply.

Q Fine. This is the original letter that he wrote you and this is your reply?

A Copy of it.

Q Giving the decisions.

A He didn't sign the original letter. He dictated it and then left the office and I waited there for a few hours while the secretary prepared these copies of the proceedings.

Q This is the instrument we were referring to?

A Yes.

MR. NICHOLS: We would like these marked for identification.

MR. O'NEILL: We have no objection to their being introduced in evidence. We would also suggest that maybe the copies that went with the letter be put in.

MR. NICHOLS: That is what I am talking about.

MR. O'NEILL: The copies of the affidavit and the motion to recuse.

MR. NICHOLS: Oh, all right. Fine. Put it all in.

SECRETARY FRASER: That will be marked as Respondent's Exhibit 8.

MR. O'NEILL: We have no objection to its introduction in evidence.

CHIEF JUSTICE DREW: Is it being offered for identification, Mr. Nichols?

MR. NICHOLS: They say they have no objections to putting them in evidence. So we will just put them all in evidence; or either way. It doesn't make any difference.

CHIEF JUSTICE DREW: Are you offering them in evidence?

MR. NICHOLS: I can't offer them in their case, Judge, but they say they have no objection to it being offered.

CHIEF JUSTICE DREW: Very well. It will be introduced and marked as the appropriate exhibit number.

MR. NICHOLS: I believe we will have the Clerk put them all together and use them as one exhibit.

BY MR. NICHOLS:

Q Now, Judge, in your memorandum concerning the contempt, you cited a Giblin case, didn't you?

A Yes.

Q The Giblin case, I believe, did it not, said that if the affidavit were germane to the subject matter that then they were privileged?

A That is substantially it.

Q That substantially is correct?

A Although the affidavits in that case wandered so far afield that nearly everything apparently was considered by the Court as being germane to the subject matter.

Q Now, in your memorandum when you got down to Number 3, the only opinion that you cite is the Giblin case?

A Yes sir, and as far as I know, the only case in Florida substantially in point. It was a case with which I was very familiar, knowing both Judges, and at the time that case arose I was Chairman of the Circuit Judges Association of this state and had become acquainted with the problems involved in that case.

Q That was quite an outstanding case because they were both Judges?

A Yes, and later on became very close friends in spite of a very poor start.

Q You mean Judge Giblin and Judge Milledge became good friends after?

A Yes.

Q Now, did you cite to him the additional cases, two additional cases of Jarratt vs. Culver, 8 So. 2nd, a Florida case on the same question?

A No sir. I regarded the Giblin case as controlling. I always regard the latest statement of our Supreme Court as being the law of Florida.

Q And did you cite to him also the additional Florida case, Fort Pierce Bank - - - no, State vs. Peacock - - -

A No sir.

Q - - - in 152 South - - -

A No sir.

Q - - - on this subject? Did these two cases discuss this question of contempt and going beyond the scope of disqualification in contempt?

A I don't recall if they did nor not, Mr. Nichols. I haven't looked at those cases for a long time.

Q Would it refresh your recollection from the Peacock case, and I quote, "But even in cases of proceedings to invoke the disqualification of the Judge the power to punish for contempt exists where there is such uncalled for acts or wrongful conduct as amounts to an actual direct obstruction to or interference with the administration of justice." You didn't give that authority, did you?

A No sir, because I believed the Giblin case overruled that. There could have been no more vicious attack made on a Judge than was made by Judge Giblin later, Judge Giblin on Judge Milledge. They said more things about him that I would have thought it possible for a lawyer to say and not get shot, and the Supreme Court held they were privileged, charging Judge Milledge having sold out completely to the organized gamblers of Tampa and still being under political obligation in the process of paying them off in pending litigation. I can't imagine anything more egregious than to charge that, and the Supreme Court held that was privileged.

Q Do you recall the impeachment proceedings of Judge Magbee, way back in 1900, that that one involved a contempt proceeding, and when he called them before him, the rule to show cause, that the attorney who had been cited for contempt came in with a shotgun and leveled it at him and pulled the trigger?

MR. O'NEILL: I object to counsel testifying.

THE WITNESS: Frankly, I don't recall that. It happened in 1800, and I had never been told that particular case.

BY MR. NICHOLS:

Q That procedure short cut the trial process, did it not?

A Yes.

MR. O'NEILL: We object to the side remarks of counsel for the Respondent.

MR. NICHOLS: We will move on to something else.

MR. O'NEILL: And I ask that the Court be instructed to disregard the comments from the newspapers Mr. Nichols read about two weeks ago.

BY MR. NICHOLS:

Q Now, Judge, you were defeated in 1954 by the Republicans of your area, were you not?

A Well, at least the voters of the area voted for a Republican opponent. I had the honor of being the first Circuit Judge in Florida to be defeated by Republican since the Reconstruction days, a rather unique privilege, which I still don't relish.

Q That was rather a shock, wasn't it?

A Well, it was a substantial disappointment. Nobody likes to lose an election, Mr. Nichols.

Q And you have been kind of unhappy about it since?

A No, because, frankly, I am earning so much more with my practice of law with a little teaching on the side than I was earning when I was on the Bench, and I can call my soul my own. I don't have to take a case unless I want to, and a Judge has to hear everything that comes in front of him. It is a great privilege, you know, Mr. Nichols, which I am sure you appreciate. There are great advantages in both lines of the profession, on the Bench and in the practice of law.

Q Do you think probably, if the people at the polls, less than three years from now vote Judge Kelly out of office, they will do him a favor?

MR. O'NEILL: We object to the question as being argumentative and editorializing on the part of counsel. He knows very well it is improper.

MR. NICHOLS: I withdraw the question and I have no further questions.

MR. O'NEILL: If the Court has some Senate questions, I will have some redirect.

CHIEF JUSTICE DREW: Judge Wehle, Senator Gibson asks this question: "Judge Kelly asked your and others' opinions regarding disqualification in a contempt proceeding. How closely did he follow that advice?"

THE WITNESS: As far as I know, he did not follow my advice. Whether he followed the advice of any of the other attorneys, I do not know because I don't know what their advice was. He phoned me and said he did not intend to follow my advice in holding these proceedings privileged and was going to proceed with the contempt proceeding. From then on, all I know is what I read in the newspaper, that such proceedings were held and then appeal taken to the District Court of Appeal. I was not further involved.

REDIRECT EXAMINATION

BY MR. O'NEILL:

Q Judge Wehle, how long did you serve on the Circuit Bench?

A A few months less than ten years.

Q Have you threatened any lawyers or witnesses or court officials with contempt of your court during the time you were on the Bench?

A Well, when I threatened it, I did it.

Q How many times have you held lawyers or court officials, jurors, or other attaches in your court in contempt?

A With the exception of once in a while fining a lawyer a few dollars for being late in court, I never held any lawyer or court official or attache in contempt. I frequently held witnesses in contempt for what I regarded as deliberate perjury, later confessed on the stand, and sometimes parties in contempt for misconduct on the stand, but never attorneys or court officials.

MR. O'NEILL: No further questions.

MR. NICHOLS: Thank you very much.

CHIEF JUSTICE DREW: Do you wish to excuse this witness under the same stipulations as the previous witnesses?

MR. O'NEILL: Yes sir, subject to recall, and to advise Judge Wehle he is still under the Rule. He may return to St. Petersburg subject to recall by telephone.

CHIEF JUSTICE DREW: The Rule still prevails, Judge Wehle.

(witness excused)

MR. O'NEILL: Judge T. Frank Hobson, Jr.

Thereupon,

JUDGE T. FRANK HOBSON, JR.,

having been first duly sworn as a witness for and on behalf of the Managers, testified as follows:

DIRECT EXAMINATION

BY MR. O'NEILL:

Q Will you state your name and where you live and your official position, if any?

A T. Frank Hobson, Jr., St. Petersburg, Florida, Circuit Judge, Sixth Judicial Circuit.

Q When did you first ascend the Bench as a Judge in the Sixth Judicial Circuit, Judge Hobson?

A December, 1960.

Q Were you first appointed to that post?

A I was.

Q Have you subsequently been reelected?

A I have.

Q How long prior to the time that you became Circuit Judge had you practiced law in Pinellas County?

A I graduated in June, 1952, and was Assistant Attorney General of the State of Florida from June until September; I went into the armed forces at that time; returned to St. Petersburg in September or the first of October, 1954, and have practiced since that time in St. Petersburg.

Q Where did you obtain your law degree from?

A Stetson University.

Q Do you know Judge Richard Kelly, of the Sixth Judicial Circuit?

A I do.

Q How long have you known him, sir?

A Since the fall of 1960.

Q Are you familiar with the case of Neel et al. vs. The City of St. Petersburg Beach - - -

A I am.

Q - - - Case Number 58380?

A I'm familiar with the name, the style; I don't recall the number, but I'm familiar with the style of the case.

(A court file was passed to the witness by Mr. O'Neill)

BY MR. O'NEILL:

Q On or about what date was that case filed, sir?

A It was filed on March 24, 1961.

Q Did you have occasion to have a conversation, or did Judge Kelly seek an audience with you on or about that date, concerning this particular case, and if so, what was said?

A It was sometime subsequent to the filing of the case. The case was brought to me under our system at that time in St. Petersburg, not being the county seat, we would call Clearwater and have the case assigned a number, either in chancery or law, and assigned to a specific judge when the restraining order or injunction without notice was sought.

Q Was this involving an injunction?

A This was an injunction against the City of St. Petersburg Beach, enjoining them from transferring land - - - they had passed a resolution where they were going to - - - it was alleged in the complaint, going to deed public land to private individuals.

Q Was the injunction entered?

A I entered a temporary injunction, and I believe it was on the same - - - I'm sure - - - yes, the same day it was filed, March 24, '61. The case was assigned to Judge Kelly.

Q Was there a conversation had with Judge Kelly after that date, after you had entered the injunction?

A I entered the injunction. It was set for hearing. Judge Kelly was not in St. Petersburg when they came to me, on the 24th of March; that's the reason I signed the injunction. The day of the hearing, he was there, and they went before Judge Kelly to argue a motion to dismiss that was filed by the defendant, City of St. Petersburg Beach.

Q What did Judge Kelly say to you in regard to that case at the time you talked with him?

A They argued it - - - I don't know whether it was two full days, but I know they argued it on two separate days. At the end of the second day - - - our chambers at that time were set up where, when you come out of the court room, you go through what is now my reception room, at that time it was just a storage room, and then go through my chambers into the chambers that Judge Kelly was using at that time. He came through and stated to me that he didn't think the complaint stated a cause of action, but that he did not want the city to deed the land away, and he thought the thing to do would be to dismiss the complaint, but leave the injunction in force.

Q When you enter an order of dismissal in a cause, does the court, at that particular time, lose jurisdiction of that cause?

A It does.

Q Will you explain that, Judge Hobson, in view of the fact that there are some attorneys in this court, and some layman, would you explain what you mean by injunction and dismissal, in lay terms?

MR. NICHOLS: Now, just a moment, Your Honor, the facts speak for themselves. He's already testified what they were, and it's up to this Court to decide the actions, one way or the other.

CHIEF JUSTICE DREW: Well, I think the majority of this court would probably like to have the Judge's explanation, and I'll overrule the objection.

BY MR. O'NEILL:

Q Would you explain, in lay terms, Judge Hobson, the procedure, the motion to dismiss, the hearing, what the injunction is, and what, exactly, Judge Kelly said, and the net result and effect thereof, and why you lose jurisdiction in this, by a motion to dismiss and order of dismissal?

A The only way we get jurisdiction is by the filing of a complaint. If this complaint does not state a cause of action, and a motion to dismiss is filed against it, if that motion is granted, the complaint is dismissed, and we lose all jurisdiction whatsoever in the case. An injunction is an order. It can be either mandatory, or telling somebody to do something, or it can tell somebody not to do something. In this case it was an injunction, telling the City of St. Petersburg Beach not to deed this property to these private individuals. If the complaint was dismissed, and the motion granted, the Court would entirely lose jurisdiction, and the Court could not tell the City not to deed the land to these individuals.

Now, Judge Hobson, do you know the reputation of Judge Kelly amongst the members of the Bench and the Bar, and in the community, as to the manner in which he conducts and holds his court?

MR. NICHOLS: We object to that on the ground that there's not been a proper predicate laid. He has not said he's ever been before him, or has any information concerning it. There's not been a proper predicate laid for that type of testimony.

MR. O'NEILL: May it please the Court, the Senate has previously ruled on this question, on about the third day of this trial.

THE WITNESS: I think, when you say, as to the judiciary, the question is in improper shape, Mr. O'Neill.

MR. O'NEILL: I will rephrase the question to eliminate the judiciary.

BY MR. O'NEILL:

Q Judge Hobson, do you know the reputation of Judge Kelly amongst the members of the Bar, and the community, as to the manner in which he conducts his court?

A I do.

Q What is that reputation?

A Bad.

Q Upon what do you base that statement, "bad"?

A Upon the, anywhere from fifty to a hundred attorneys that have come to me and discussed the situation with me, as far as the Bar and the general public, and as far as the community.

Q Are those attorneys from Pasco or Pinellas County?

A The fifty to a hundred are from Pinellas County; just about everyone in Pasco; that would be almost a hundred per cent in Pasco.

Q Have you had occasion to sit as a Circuit Judge in Pasco County?

A I have.

Q Have you had occasion to sit as a Circuit Judge in Clearwater, Florida?

A I have.

Q Have you also sat and handled court in St. Petersburg, Florida?

A I have, mostly in St. Petersburg.

Q Have you ever had any difficulty with the lawyers practicing before you in Dade City, Pasco County, Floriad?

A I have not.

Q Have you ever had any difficulty with the lawyers while you were sitting as a Judge in Clearwater, Florida?

A I have not.

Q Have you ever had any difficulty with lawyers practicing before you in St. Petersburg, Florida?

A I have not.

Q Have you ever, at any time since you have been a Circuit Judge, threatened a lawyer or court official or attache, bailiff, with contempt of court?

A I have not.

Q Have you ever held any attorney, court official or attaches or clerks in contempt of court?

A I have not.

Q Do you know what Judge Kelly's judicial temperament is?

A Only by reputation, not personally.

Q What is that judicial temperament?

MR. NICHOLS: I object to that. There hasn't been a proper predicate laid; you do not judge a man's temperament - - -

MR. O'NEILL: I withdraw the question. You may inquire.

CHIEF JUSTICE DREW: Judge, I would like one thing straightened out in my own mind, and I imagine there may be others, members of this Court who would:

When you talked to Judge Kelly, what, exactly, did Judge Kelly say to you about continuing the injunction and dismissing the case?

THE WITNESS: He told me - - -

MR. NICHOLS: Excuse me. I'm not objecting to the conversation, Your Honor, but I would like the record to show, actually, what he did do.

CHIEF JUSTICE DREW: That's what I wanted to find out. What did he say to you about it, and then - - - I just wanted to know what he said to you about it, and then I think this can be pursued on cross examination. I want to be clear as to what your answer was.

THE WITNESS: He told me that he did not think the complaint stated a cause of action, that he was going to dismiss the complaint, but leave the temporary injunction in force, so that the City could not deed the land away before they had an opportunity to file an amended complaint. The record shows that they filed an amended complaint after responsive pleading was filed which, under the rules, takes a court order to do.

CHIEF JUSTICE DREW: I have no questions on the Bench. You may proceed.

CROSS EXAMINATION

BY MR. NICHOLS:

Q Of course, Judge, the dismissal of the complaint dissolves the injunction, it dismisses everything related to the matter, isn't that right?

A Yes sir, I just testified to that.

Q All right, sir. Now, Judge, I believe you are a Democrat, are you not?

A I am.

Q And you ran for election at nineteen - - - at the last time, on the Democratic ticket?

A I did.

Q Now - - -

A And I was fortunate enough to be elected.

Q They do elect Democrats down there in Pinellas County, don't they?

A They did, they elected three in the - - -

Q At the same time - - - I say, they elected Judge Phillips at the same time beat two Republicans?

A That's correct.

Q And there's some other Democrats there also?

A Commissioner Freese.

Q Now, aren't they taking a population census at the moment down there, to decide if they're going to get one or two more Circuit Judges?

A That's my understanding, that the commissioner has already been appointed.

Q I guess Governor Bryant will get to appoint those, if such a population is increased?

A That's correct.

Q And you have eight Circuit Judges now in the Circuit, is that correct?

A That's correct.

Q Then, there are now three Democrats that are Circuit Judges?

A That's correct.

Q And if Bryant appoints two, that would be five; that would be five Republicans - - -

MR. O'NEILL: We object to the question as being improper on cross examination, speculative, irrevelant and immaterial.

CHIEF JUSTICE DREW: Sustained on all the grounds.

BY MR. NICHOLS:

Q Judge, were you subpoenaed here to testify?

A I was.

Q Would you be here if you didn't have a subpoena?

A If you mean would I voluntarily inject myself - - -

Q That's correct.

A - - - in this proceeding, I would not. I don't think it's my place to voluntarily inject myself into any situation involving a judicial officer.

MR. NICHOLS: Thank you very much. That's all.

CHIEF JUSTICE DREW: Any further questions?

MR. O'NEILL: The State has no further questions. I would like to, under the stipulation, excuse Judge Hobson, subject to recall, and admonish him he's still under the Rule until such time as he's permanently discharged.

CHIEF JUSTICE DREW: That will be the order. You're excused, Judge Hobson.

THE WITNESS: Thank you.

CHIEF JUSTICE DREW: Call the next witness.

MR. NICHOLS: Now, may we get the record put into - - - for identification over here, the record the judge has testified about?

MR. O'NEILL: I have no objection to having that particular file marked for identification. Judge Hobson, may I ask you, did you sign out this particular case at my request?

THE WITNESS: I did.

MR. O'NEILL: And you did bring it with you?

THE WITNESS: Yes sir.

MR. O'NEILL: And you have your receipt in there?

THE WITNESS: It's in the clerk's office.

MR. O'NEILL: I assure you, we'll return it. I wanted to get it in the record that you did sign for it. I have no objection to having the file marked for identification.

MR. NICHOLS: Thank you.

CHIEF JUSTICE DREW: That will be the order, and mark it as an appropriate exhibit for idenfification.

(Whereupon, the above referenced instrument was marked Respondent's Exhibit 9-B, for Identification)

(Witness excused)

MR. O'NEILL: Judge, may I respectfully request that we have our morning break at this particular time, in view of some circumstances that I will later relate to the Court?

CHIEF JUSTICE DREW: Without objection, that will be the order.

WHEREUPON, AT 10:22 o'clock A. M., the Senate stood in recess.

The Senate was called to order by the Chief Justice at 10:37 o'clock A.M. A quorum present.

MR. O'NEILL: Richard Kelly.

SECRETARY FRASER: Richard Kelly?

MR. O'NEILL: Richard Kelly, Circuit Judge, Sixth Judicial Circuit.

MR. NICHOLS: May it please the Court, this is in the nature of criminal proceedings in which charges have been made against our client, and we do not intend to submit him, the client, at this time for examination, but during our case he will go on fully to explain any of these proceedings and go completely through cross examination in any manner necessary.

CHIEF JUSTICE DREW: Do you object to having him placed on the stand?

MR. NICHOLS: Yes sir, we do.

CHIEF JUSTICE DREW: Do you care to present any argument on the subject, Mr. Nichols?

MR. NICHOLS: No sir.

CHIEF JUSTICE DREW: Do you care to present any argument?

MR. O'NEILL: May it please the Court, may I have a few minutes consultation with my co-counsel?

(The House Managers conferred at their table.)

MR. O'NEILL: May it please the Court, in view of the statement of counsel for the Respondent that Judge Richard Kelly will submit to cross examination at the time the defense will place their testimony before this Court, we therefore will withdraw the request that he appear on the stand for cross examination, adverse party involved. Therefore, we will withdraw, based upon the statement made by counsel for the Respondent.

MR. NICHOLS: On the grounds additionally that any man accused does not have to take the stand against himself.

MR. O'NEILL: May it please the Court, we have law on it, and therefore, we have withdrawn our request, but I will be glad to furnish counsel for the Respondent my law, but I have withdrawn my request and therefore it is a moot question.

MR. NICHOLS: Your Honor, I don't think we are going to need any further speeches, but I think this is a maneuver by the Managers from the word "go." It is just like the matters we went into yesterday, and I think it shows something of the desperation of their case.

MR. O'NEILL: May it please the Court. if we are going to go into a debate here - - -

CHIEF JUSTICE DREW: Gentlemen, you will both be seated. You have made your argument. There is nothing before the Senate. You may call your next witness.

MR. O'NEILL: May it please the Court, the State rests.

CHIEF JUSTICE DREW: The Respondent may call its first witness, or if the Respondent has any motions to present, the Court will hear them at this time.

MR. O'NEILL: May it please the Court, will the motions be in writing, and if so, will we be furnished copies thereof?

CHIEF JUSTICE DREW: There is no requirement that the motion be in writing. It may be dictated into the record. If you have not received a copy of the motion, it can be dictated into the record, and if request is made for time to familiarize yourself with it, then the Court can consider that request.

MR. O'NEILL: The query was whether it would be in writing, not whether or not it would be necessarily in writing.

CHIEF JUSTICE DREW: Will the motion be in writing, Mr. Nichols?

MR. NICHOLS: Your Honor, the motion is being typed. We had been told by the Managers that they had witnesses that would run through the afternoon.

MR. O'NEILL: May it please the Court, we object to the voluntary statement of counsel as to what we told counsel.

CHIEF JUSTICE DREW: Gentlemen, you both - - -

MR. NICHOLS: I am addressing my remarks to the Court, and I am trying to get before the Court. I am addressing the Court and I am answering the question that has been asked by the Managers of the Court.

CHIEF JUSTICE DREW: All right. Proceed.

MR. NICHOLS: And I said that the matter is being typed. A motion is being typed. We did not know that they were going to rest their case at this time. I do not have it here at the moment. Therefore, I respectfully request the Court for approximately a two-hour recess until we can get organized to present the motion and at the same time have the written motion to present and let us get a little bit better organized for the presentation of that motion, and I would respectfully request the Court if we could, to adjourn until one o'clock.

CHIEF JUSTICE DREW: Mr. Nichols, when do you expect to have a copy of the motion available for the Managers for the House?

MR. NICHOLS: Just the minute that I can get it typed- - -

CHIEF JUSTICE DREW: How long will that be?

MR. NICHOLS: - - - as far as that motion is concerned, and we also would request the Court to give us until one o'clock and let us come back early so that we will not lose the time.

MR. O'NEILL: May it please the Court, for the consideration of the Senate, two hours would be a quarter till one. If we adjourn till two-thirty, the regular time for convening of the afternoon session, it might be more appropriate, because commitments were made by various of the Senators as to their lunch hour. I suggest that respectfully for consideration of the Court as a whole.

MR. NICHOLS: We concur with the Managers in that request.

CHIEF JUSTICE DREW: I am going to ask the pleasure of the Senate with respect to whether they desire to adjourn until two-thirty to allow counsel to prepare his copies and present the matter. Senator Johns.

SENATOR JOHNS: I move that the Court stand in recess until two-thirty.

CHIEF JUSTICE DREW: Is there any discussion? Gentlemen, before I take a vote, I assume you will promptly deliver to the House Managers, Mr. Nichols, a copy of any motion you make.

MR. NICHOLS: Yes sir. It is in the same hotel, one floor below where we are, and I will have it there.

(The motion, being put to a vote, was passed.)

CHIEF JUSTICE DREW: The Court is in recess until two-thirty o'clock this afternoon.

Whereupon, at 10:49 o'clock A.M., the trial was recessed until 2:30 o'clock P. M., of the same day.

AFTERNOON SESSION

The Senate reconvened at 2:30 o'clock P.M., pursuant to recess order.

The Chief Justice presiding. A quorum present.

CHIEF JUSTICE DREW: May I speak to Senator Davis? (Senator Davis mounted the rostrum and conferred with the Chair.)

CHIEF JUSTICE DREW: The Court will please come to order. I have a request from Senator Davis, of the 40th, reading as follows:

"Under the provisions of Rule 30, I move that the rules be amended to provide that a motion for a directed judgment of acquittal, after the presentation of the House Managers' case, shall be granted, unless two-thirds of the Senators present vote against granting said motion." Now, Gentlemen, in open session, this is not something to debate. What is the pleasure of the Senate with reference to the motion.

SENATOR FRIDAY: Mr. Chief Justice, I move we go into closed session.

CHIEF JUSTICE DREW: As many as favor the motion say "aye." Opposed "no."

CHIEF JUSTICE DREW: The "ayes" have it. We'll go into closed session.

Whereupon, at 2:34 o'clock P.M., the Senate closed its doors.

Senator Cross moved that the doors of the Senate Chamber be opened and the doors were opened at 3:20 o'clock P.M. A quorum present.

CHIEF JUSTICE DREW: The Court will please come to order.

Do counsel for either side have any motion with reference to time to argue this motion? Under the rules, it being an interlocutory motion, thirty minutes a side can be allowed and it cannot be extended.

SENATOR ASKEW: Mr. Chief Justice, I believe that the motion of the Respondent, the question of the admissibility of the evidence as to the check is still pending, and I believe that this should be disposed of before the motion to dismiss should be argued.

CHIEF JUSTICE DREW: There is a pending motion, unless counsel wishes to withdraw it.

MR. NICHOLS: If Your Honor please, I do not wish to delay the matter further, and so that we can move along with the matter, we will withdraw that motion at this time and let the Court deal with it as it sees fit later on.

CHIEF JUSTICE DREW: Do you make any request for additional time, or can you conclude your argument in thirty minutes?

MR. NICHOLS: We had a conference with the Managers yesterday afternoon and reported to His Honor that we would both urgently request an hour to a side.

CHIEF JUSTICE DREW: What is the pleasure of the Senate.

SENATOR SPOTTSWOOD: I so move, Mr. Chief Justice.

CHIEF JUSTICE DREW: Any discussion? As many as favor the motion to allow an hour a side to argue the motion to dismiss, say "aye." Opposed, "no."

The "ayes" have it. Gentlemen, you are allowed one hour to the side.

You may proceed, Mr. Nichols.

SENATOR COVINGTON: Mr. Chief Justice, I call attention to the time. It appears that the argument of the motion will carry till tomorrow. A motion to conclude the arguments and decide the question would be appropriate at this time.

CHIEF JUSTICE DREW: What is the pleasure of the Senate with reference to that matter?

SENATOR COVINGTON: I make a motion that the time of adjournment be extended until the conclusion of the arguments and the Senators then to decide, be given an opportunity to decide the question.

CHIEF JUSTICE DREW: Gentlemen, a motion has been made that the hour of recess or adjournment of this body be extended until the conclusion of the argument and until the Senate concludes its deliberations on whether the motion to dismiss should be denied or granted.

Any discussion?

As many as favor the motion, say "aye." Opposed "No."

The "ayes" have it. The motion is adopted.

You may proceed, Mr. Nichols.

MR. NICHOLS: May it please the Court, we are going to divide our argument. Mr. Barney Masterson will make the opening of our argument.

CHIEF JUSTICE DREW: Mr. Nichols, under the rules, only on preliminary motions, only one side may argue without a waiver of the Court.

Do I hear a motion - - -

SENATOR CROSS: Mr. Chief Justice, I move that they be permitted to divide their arguments between two lawyers on each side.

CHIEF JUSTICE DREW: As many as favor the motion say "aye." Opposed "no."

CHIEF JUSTICE DREW: The "ayes" have it. The motion is adopted.

SENATOR EDWARDS: Mr. Chief Justice, I believe the Senator from the 32nd's motion said two lawyers on each side, and I voted for his motion, but if the gentlemen would like three lawyers on each side, I would be in favor of that, and I would so move.

MR. NICHOLS: We don't need but two. We have no objection to them dividing their time however they want.

MR. O'NEILL: The Board of Managers would anticipate at this time, and at the time of argument, only using two.

CHIEF JUSTICE DREW: You may proceed.

MR. MASTERSON: Mr. Chief Justice Drew and Members of the Senate:

We, of the attorneys for the Respondent, Richard Kelly, have filed a motion, seeking the dismissal of the Articles of Impeachment which have been filed against him.

Our primary responsibility is to Richard Kelly, but I think, in a larger sense, that we have a responsibility to the entire judiciary of the State of Florida. The proposition that is before you in these proceedings involves every judge, sitting in every court in the State of Florida, and that proposition is simply this:

Must a judge render decisions on the basis of the influence of the lawyer involved? Must a judge curry favor with the Bar that practices before him, or risk impeachment, risk being discharged from his office, risk public disgrace and humiliation, or can he make his decisions independently, as an independent judiciary was intended to make them?

Now, gentlemen, I think, also, in a larger sense, every citizen of the State of Florida is a participant in these proceedings because, when the independence of the judiciary is diminished, it diminishes all of us. The very foundation of all our liberties and all our rights depends upon an independent judiciary, which is not subject to prejudice by lawyers, litigants, or from any other source.

The burden that is assumed by the State in this case is that of proving, beyond and to the exclusion of every reasonable doubt, that Judge Kelly is guilty of crimes of a nature justifying impeachment and removal from office, and that's a heavy burden, and it should be a heavy burden, because the penalty in this case is indeed a heavy burden.

The penalty in this case is the removal from office of a Circuit Judge, the personal ruin and disgrace of this Judge, the barring of this Judge from any office of public trust for the remainder of his life. So, it is right and it is proper and it is appropriate that a heavy burden indeed be imposed upon the State before it inflicts a penalty of that gravity.

Now, members of the Senate, we at the Respondent's table submit that the State has failed utterly to establish, by any sort of competent evidence, that any penalty of this character should be inflicted upon this young Judge.

They have not proved any crime of any gravity, and you heard - - - you had the benefit in our argument on the motion to dismiss - - - you had the benefit of hearing what the precedents are for an impeachment, and they involve invariably, crimes of the gravest character, not the trivial, the petty grievances which you've been listening to so patiently now for a period in excess of two weeks.

I submit to you, gentlemen and Mrs. Johnson, that the only thing that's been proved in this case, beyond a reasonable doubt, is that Judge Kelly never had a chance to be a judge. He was never given the opportunity to be a judge, and I want to review some of the things that occurred to him immediately upon the assumption of his office.

Let's consider what has been established in the State's case.

From the day this Judge took office - - - and this is the State's case, this is E.B. Larkin testifying - - - from the day he took office, there was a concerted move on the part of the entire Bar - - - virtually the entire Bar of Pasco County - - - to refuse to submit cases to this Judge.

The very first case that Charlie Luckie had before this Judge, the very first case, before he had performed a single judicial act involving Charlie Luckie or any of his clients, resulted in a forty-nine-page suggestion of disqualification. Charlie Luckie had filed forty-nine pages of misconduct, judicial misconduct, I presume, because that is the only just basis for disqualification of a judge, forty-nine pages before he had ever performed a judicial act involving Charlie Luckie.

I suggest to you, that is so manifestly unfair as to not require any consideration on your part at all.

The temper of the Pasco Bar and of the lawyers who were appearing before Judge Kelly - - - and am I still swallowing this microphone - - - the temper of that Bar was gauged with considerable foresight by Judge Leavengood, who told Judge Kelly, on the day he assumed office - - - and he so testified here in the State's case, that you'd better get along with those lawyers, or they're going to impeach you.

This is before he did a single judicial act. He received this warning from the now presiding judge of the Circuit.

Consider the situation which this Judge found himself in when he took office. He had defeated a respected and admired judge, Judge Orvil Dayton. This is not a contest between Judge Kelly and Judge Dayton. Judge Dayton was well respected, well admired, and Judge Kelly had beaten him at the polls, and the Bar of Pasco County simply refused to accept that fact and refused it before he ever performed any judicial function.

The Judge went into the Court House with the organized opposition of the Bar opposing him. He found a Court Reporter there who would take down his most trivial conversation and relay it to people who were opposed to Judge Kelly.

He found a hostile Clerk of his Court.

He found a Court House of personnel all still devoted to Judge Dayton and still loyal, and his efforts, Judge Kelly's efforts, handicapped at every turn.

I submit to you, gentlemen and Mrs. Johnson, that the situation in which Judge Kelly found himself before he had done anything judicial is one which makes us wonder how he could have performed his office at all.

Now, let us consider some of the other things that were done by these lawyers. Within the first few months after he took office, there was a proposal to create a Civil Court of Record, which would have jurisdiction up to $10,000, thus stripping Judge Kelly of virtually his entire civil jurisdiction, because most cases do not involve sums in excess of $10,000.

The move was deliberate and calculated - - - and it failed. After it failed, we find the proposed circuit change, which would have transferred Judge Kelly to Pinellas County. That was the next step, and that step might have been accomplished were it not for the fact that Senator Covington informed these lawyers that he would not go along with it, that it was morally wrong, and therefore there would be no circuit change.

It is morally wrong. It is morally wrong to attempt to alter two circuits involving seven counties, involving 500,-000 to one million people, without consulting any of the people involved or any of the lawyers of the other counties. It was a wilful attempt by nineteen lawyers to impose their will upon an entire circuit, and I submit to you that it was morally wrong.

I think perhaps the arrogance reached its peak with these lawyers at that point short of the impeachment proceedings. I want to direct your attention to the fact that this proposed circuit change took place just weeks - - - just weeks - - - before these impeachment proceedings were brought against Judge Kelly. And what these lawyers had decided was, "If we can't ship him to another county, we will destroy him." I submit to you it is that plain.

And they brought impeachment proceedings against him. Nineteen lawyers filed a petition, placed it in the House, and said, "We want him impeached."

Now, they knew what that meant. They must know. They are lawyers. That means personal, public ruin.

Of those nineteen lawyers, I point out to you, gentlemen and Mrs. Johnson, less than half have testified in these proceedings.

Where are those absent lawyers? Where is Lester Bales? Where is Getzen? Where are the Brewtons?

They went before the House and filed affidavits and said this Judge should be impeached and cast out of his office, but they are not here. Here is the trial and they are not here.

I submit that if they had anything to say against Judge Kelly that amounted to anything more than the trivia that we have now heard, they would be here. The bald fact of the matter is that they don't.

It is just that he hasn't done anything wrong.

Their grievance is that he made mistakes. Don't misunderstand me. We don't contend that Judge Kelly is perfect, but these men don't have anything substantial against him, or they would be here, and if they are not here, they have no right to file affidavits with the House of Representatives, asking you to throw this man out of office.

Now, gentlemen, I think there are some other people who are absent that you might well consider in your deliberations.

Article I (c) involves one Stanley Burnside, the Clerk of the Court, of Judge Kelly's Court. He was before the House complaining of some sort of mistreatment, and it is in one of the Articles. Where is Stanley Burnside? He isn't here, but he was before the House seeking the ruination of this young Judge.

Where is Alex Finch who is mentioned in V (b)?

The Managers themselves have discarded these Articles as being utterly frivolous and ridiculous - - - which they are.

Now, gentlemen and Mrs. Johnson, I want to go over with you the sort of evidence which you have been called upon to consider, and I am not going to go down the testimony with you piece by piece with each witness because they fall into sort of general categories.

There have been forty-three witnesses in these proceedings. Thirty-five of them, I believe, have been lawyers. Many of the lawyers have been repeating the same things over and over again. It almost sounds like a new case, but it is frequently the partner of a previous witness who is testifying to the same precise case.

Let's look at these attorneys and let's see what sort of categories they fall into.

First, there is a group which I think should be represented by Mr. Lubin. This is a group of attorneys who don't really quarrel with what the Judge said. They just don't like the way he said it.

Mr. Lubin was called from St. Petersburg to testify in these proceedings and he said that the Judge had told him that when he comes to Court he should wear a coat. Mr. Lubin agrees that when he comes to Court he should wear a coat, but he thinks the Judge did not tell him in a very nice way. And he said he went right back to his office and informed all of his staff and his partners, "We are never going to go before Judge Kelly again," not because of anything that Judge Kelly did that was wrong. He agrees with what Judge Kelly did, but he doesn't think Judge Kelly did it in the way it should be done.

Mr. Rives agrees that he should not be on both sides of a divorce suit, and that Judge Kelly had a perfect right to inquire into whether or not he was representing both sides of a divorce suit, but he doesn't like the fact that he was placed under oath and asked to testify formally about that.

Now, gentlemen, could anything be more frivolous? The Judge is performing a proper act but in a manner that the lawyers don't like, and I think that such a charge as a basis for impeachment is surely unheard of and unprecedented.

Second - - - and, this is perhaps the most curious group of all to me - - - There are lawyers who were offended, not by what happened to them, but by what happened to somebody else. Perhaps the best representative of this group was Mr. Earle's partner, Mr. Williams.

He came into this proceeding and said that he was offended by what happened to Mr. Frank Muscarella, an attorney in St. Petersburg, Florida, who was told by the Court that he should not lean on the rail when addressing the Court, and Mr. Williams said that just offended him terribly.

Where is Mr. Muscarella? If Mr. Muscarella was offended, why isn't he here?

This is not a small group. Mrs. Lovelace was offended because of something the Court said to Mr. Booth. At least she quoted Judge Kelly as saying, "Mr. Booth, are you sure you can get through the entire day? We are going to have a full day of trial." Mrs. Lovelace was offended by what happened to Mr. Booth, but where is Mr. Booth?

And then there was Mr. Larkin. This group includes, I submit to you, charges that border on the fantastic. Mr. Larkin was in here, E. B. Larkin, saying that he is offended because something the Judge did to a lady whom I won't name - - - the name means nothing - - - caused her to go into a state of adultery and to sell her body, I believe he said.

Mr. Wolfe, the most singular witness of all, says that Judge Kelly instructed him on how to introduce an exhibit into evidence, and the shock of what Judge Kelly did contributed materially to Mr. Wolfe's client taking his life.

Now, gentlemen and Mrs. Johnson, could anything be more absurd than that?

There are others in this group. Mr. Phillips, attorney from Clearwater, was offended because of some things that he says happened to his clients, but where are the clients? Where are the people that the Judge allegedly offended in this group? They are not here, and I submit that the inference could be drawn that they have no grievances. We have seen the fine net that the Managers have cast over the Sixth Circuit.

I submit that these minnows of petty grievance would have been dredged up if they exist. They certainly dredged up some small fish in these proceedings to date, and if somebody isn't here, you can be very certain that that person has nothing to contribute to the prosecution.

Now, gentlemen, there is still another group of lawyers you have heard from frequently in these proceedings. That group says that Judge Kelly hasn't done anything wrong to anybody else, but he intrudes too much in the judicial proceedings before his Court.

Now, gentlemen, we at the Respondent's table have been struck by the perceptiveness of the questions which you have asked in these very proceedings. You have asked questions of witnesses as they appear on the witness stand. You have intruded yourselves into the proceedings, and is not that a fair and proper thing for you to do? Does it not help your understanding of the issues in the case?

If there is a point which needs clarification, is it not proper, just and appropriate that you try to clarify that point? I think that the intrusion of the decider of the facts, of the party who must judge, into the proceedings for the purpose of clarification, is not only his right - - - it is his duty. And you have seen fit to exercise your duty in that respect, and I think rather than censured, you should be commended for it.

I submit the same thing is true of Judge Kelly. In order to arrive at a fair decision, he wanted to know what really were the facts, and I think it shows his sense of dedication to his office. And how can it be considered a ground of impeachment?

Gentlemen, there is still another group of lawyers. Perhaps some of these groups ring a responsive chord in your memory. This final group, I might call this group the constructive service group.

Time after time we have had lawyers in here complaining that the Judge wants to do more than the statute requires him to do to protect the rights of absent people who have no spokesman in his Court. If he does not protect them, who is to protect them? The adversary lawyer, the person who is on the witness stand in this case, is in there hostile to the interests of this absent party and wanting to get his judgment as quickly as possible and wanting the rights of this absent person to be extinguished.

Judge Kelly did not permit that to be done in his Court. He went beyond the naked affidavit and said, "What is the fact behind this affidavit?" "You say you diligently searched for the Defendant?" "What did you do to find them?"

In one case where the witness was in here complaining, it turns out that no effort had been made to look for the absent Defendant for a period of three years prior to the filing of the affidavit. And that was a case involving a situation where he was asking the Court to declare the natural father to have no further legal rights in the child before the Court. It was a step-father adoption. He was going to extinguish the rights of the natural father and declare the adopted father to be the parent, the legal parent. And he wanted to do that without preserving any rights whatsoever, actually, for the absent father.

Mr. Larkin was in here complaining about the Court going behind an affidavit in which he was saying that a fee of $25,000 - - - $25,000 - - - should be awarded to an attorney, co-attorney in Pasco County, Mr. Brewton, on the naked strength of his affidavit, and that the Judge was doing something improper in saying, "I want to put this thing on an hourly basis. Let's find out how long this lad worked. Let's find out what he did. What did he do to earn the $25,000 you are asking me to take out of the estate and put in this lawyer's pocket?"

Now, gentlemen, that is elementary justice. That is an elementary duty on the part of this Judge.

Mr. Larkin says that in all his experience of twenty-six years, every other Judge he has been before accepted the round figures that he gives, and that he is astounded - - - that is the word he used; he was astounded - - - that any Judge would inquire behind the affidavit itself.

I submit to you, gentlemen and Mrs. Johnson, that that is his duty, and any man that is offended by it is not being just to this young Judge, and certainly to say that because he is offended by it, toss him out of office and ruin his life and make him a historic disgraceful figure is being very, very unjust indeed.

And now, there are some other people who paraded in here who fall into a fifth group, which are even more incredible to me, because they want the Judge impeached because he won't do something that is legally wrong.

Mr. George Routh was in the Court the other day and he said that his grievance against the Judge was that the Judge would not declare three children who weren't in the Court, who were in Alabama, who had never been served with process, who had not had a guardian ad litem appointed, he wanted the three children declared illegitimate and that was his grievance, one of his grievances.

I submit to you that these people who want the Judge to do manifestly improper things have no place in your consideration when you retire to deliberate.

I am sure that you want to be fair to Judge Kelly, that is his right, and that is your sworn duty, and I have every confidence that you will do so, and when you consider testimony of that character, that testimony should be discarded and thrown into the rubbish heap and not even discussed when you retire.

It is unjust and unfair to the party who is most concerned in these proceedings.

Now, some of you gentlemen might reply to what I have said so far that all that you say is true, but you haven't come to grips with this problem of the reputation of Judge Kelly. After all, we have had many witnesses in the Court saying that his reputation is bad.

So let's impeach him because his reputation is bad.

I want to point out to you in that respect that most of these witnesses are talking rumor, all of them, virtually. I can't think of one that said that that was an impeachable offense, but they are talking rumor, hearsay coffee shop talk that we can't pin down at our table. We can't bring these people into Court and cross examine them. There is no transcript as to what their complaints are.

Rumor, hearsay, and that sort of thing, there can be no defense against. I tell you it is unparalleled in the history of impeachment proceedings that any Judge has ever been charged or impeached for having a bad reputation.

But I am not going to shirk my responsibility to you to discuss this bad reputation - - - which I don't think should be in the case and which I said, if you remember, we don't concede.

We concede nothing that the Managers have attempted to establish up to this point.

But let's assume bad reputation, and let's assume, what I think is rather ridiculous that it is some grounds for impeachment.

Judge Kelly, I think it is fair to say, has a bad reputation with these lawyers, these being lawyers from Pasco County who signed the petition seeking this impeachment, who opposed him before he ever took office. It is manifest in what I said before, implicit in everything that has occured in this Court room to date.

He defeated a respected and admired Judge, and the Bar of Pasco County would not accept defeat.

His reputation with the public, at the time that he assumed office, could not have been terribly bad, because seventy-three thousand people voted for him.

Now, since the election of Judge Kelly, there has been an unceasing - - - virtually unceasing - - - calculated attack on his reputation and on his competence, in the form of forty-nine-page affidavits, saying that you should disqualify yourself, you're prejudiced, you're not a good judge; in the form of circuit changes; in the form of idle gossip over the coffee table; in the form of these very impeachment proceedings; and I think that there's hardly anything that's more clearly demonstrative of the invalidity of these types of charges than the Articles themselves, which I've already referred to.

Mr. Burnside isn't here. The falsification of public instruments has been demonstrated to be ridiculous.

Go through those Articles, if you wish, and you will find that those Articles have not been established, but they've been established in the minds of these lawyers, talking over coffee, and there is where the reputation goes down the drain. And it's small wonder. I'm surprised he has any reputation left at all.

Now, bear in mind, gentlemen and Mrs. Johnson, that the testimony you've heard represents a small fraction of our Sixth Circuit Bar, in which there are over four to five hundred lawyers, conservatively.

Hillsborough County practices before this Judge, with its large Bar.

You've heard from thirty-three or thirty-four disgruntled lawyers. The mass of lawyers are not before you, and have no complaint to make about this Judge.

Finally, gentlemen, lawyers don't make or break a judge's reputation.

I can understand how when this Judge said, "I want to see something beyond the affidavits before I award you lawyers $25,000," I can see how that might make him less than popular with the lawyers.

I can see where when he said, "I want you to do more in regard to that affidavit," that that may make him less than popular with some of the lawyers, but lawyers are only a small percentage of the people involved; it's the general public - - - we haven't heard from them at all. Where are the jurors; we haven't heard from them at all. Where are the litigants themselves; there hasn't been a litigant in this Chamber, nor a member of the general public, nor a juryman. Those are the people who determine, dispassionately and justly, whether or not this Judge is a good Judge. And if you require us to do it - - - which I don't think you will - - - we're going to bring some of those people here. But to say that a Judge, unless he's popular with his lawyers, is not a good judge - - - when a small segment of the bar says he's not a good Judge - - - I think is untenable.

Now, gentlemen, the evidence in the State's case is that this Judge is diligent, he's dedicated, he's fearless, and he isn't currying favor with these lawyers, he's doing what's right; his integrity is unquestioned, and I submit to you that this is part and parcel of the State's case, not our case. We don't need to prove these things, they've been established.

Now, Judge - - -

CHIEF JUSTICE DREW: You have used thirty minutes, sir.

MR. MASTERSON: All right, sir. If I may close:

Again, I reiterate that every Circuit Judge is involved in these proceedings, and your responsibility is not merely to Judge Kelly, grave though that responsibility is, but to every Circuit Judge in the State, and to all the citizens of the State, and I respectfully urge you to dismiss these proceedings against Judge Kelly, and reaffirm your faith in the independence of the judiciary.

MR. JONES: Mr. Chief Justice, lady and gentlemen of this Court:

I think, before we begin, that we should - - -

SENATOR MATHEWS: Mr. Chief Justice - - -

CHIEF JUSTICE DREW: Yes.

SENATOR MATHEWS: - - - if their hour is going to be contiguous, would this not be a good time for a short recess, if we're going to have one?

CHIEF JUSTICE DREW: Is that the pleasure of the Senate?

SENATOR MATHEWS: I so move, Mr. Chief Justice.

CHIEF JUSTICE DREW: We'll be in a short recess, about five or ten minutes, gentlemen.

Whereupon, at 3:55 o'clock P. M., the Senate stood in recess.

The Senate was called to order by the Chief Justice at 4:15 o'clock P. M. A quorum present.

MR. JONES: Mr. Chief Justice, lady and gentlemen of the Court:

I think, first, it would be important for us to see right where we are, as the Judge would say, and I would submit to you that I feel like we're in this position:

We're not here arguing whether or not the Judge is guilty or innocent. The time has not come for that. The Judge has not given his explanation of these charges. We have not heard his witnesses, we have not heard the full case; so, we're not here to determine, at this point, as we would be led to believe, that now is the time to say the man is guilty or is he innocent, which leads to the next question:

We're not here as a Court of Impeachment to assess a penalty on this man. We're here, or you are here as the highest court in the land of Florida, to decide whether or not this Judge has put the judiciary of Florida into an embarrassing position, whether or not this man has put the judiciary of Florida in such a position that the people of the two counties down there have some misgivings and some mistrust about their court system, and this is what you heard the testimony to that effect for some two weeks, and I, for one of the Managers, would like to express my appreciation to the patience and the tiresome labors which you have had to undergo in this respect, but I think it's important for us to consider from the outset that we're not here on this vote to determine, is the man guilty or innocent; we are here to determine has there been an absolute failure of proof that the court in the Sixth Judicial Circuit, as handled and maintained by Judge Richard Kelly, is that court in disrepute? Is that court in disrepect? Do the clients, do the litigants, do the general public in those two counties feel that they can't or they might not get the justice that they're entitled to?

Has there been a proof of that to this extent, or to this point? If there has, then I think that the Respondent should be required to go ahead.

I think at this point too, that we need to bare this thing, and say what are we here talking about? We're here talking about, as was pointed out to you at the opening of this case, we're not talking about a man that went down to the till and took a hundred thousand dollars out and made the front page of all the big papers in Florida. We're talking about the little man that just keeps taking away the hundred thousand dollars, a penny a day, a penny a day, a nickel here, a dime there, a penny here. So, of necessity, it's had to be a slow case, it's had to be a case that's got to be weighed heavily.

It recalls to my mind a novel that I read several years ago, entitled "The Caine Mutiny."

If you will recall, the young lieutenant was on trial there for mutiny, for taking the skipper off of the bridge. When it came time for his trial, it was hard for him to explain to that court why he took that skipper off of the bridge.

The court said, "Look, this is a naval officer of twenty years. This man has a fitness report for twenty years in the Navy. He's commanded this ship and that ship. He's been a diligent lawyer, he's been a diligent captain. Why, young lieutenant, did you accept the authority to rip that man off the bridge?"

The lieutenant said, "Because the captain hunted the strawberries one night." They said, "This is silly, it's frivolous" - - - as Mr. Masterson would say, it's trivia, the skipper wanted to see if anybody was stealing strawberries, and stealing is a bad crime. So, the lieutenant says well, he lined us up and he couldn't find the strawberries.

What else? Well, "he hunted a key. A key was missing." What else? "He jumped on one of us because we had our shirt tail off - - - out." What else? "We made the mistake of running across the tow line."

You all know the answer; when all of those things were put together, it was clear to the Court that Captain Queeg and his stell balls ought to go.

I submit to you, its much of the same problem that you've got here. You've got a lot of little things that may be called trivia - - and incidentally - - - but when they're all put together in your minds does it bring distrust? Does the fact that this Judge has attacked, openly, vociferously, every member of the Pasco Bar, their families, all of the officials in the court house, characterized the lawyers of Pasco County as un-American, sinister. Do these facts, are these facts just trivia?

I submit to you that's what you're here faced with; there's no explosive situation, we don't have it, we don't intend to say we do, but we believe at this point that we have proved to you a case that would require the Respondent to answer these charges placed against him.

I, like Mr. Masterson, would tell you that the judiciary does hang in balance when a court such as yours exists; yes, the respect of the judiciary of Florida.

We're not here to argue, as he would say, about the independence of the judiciary, that if you convict this man, no longer will the judiciary be independent of the lawyers.

I think each and every one of you will recall that we attempted, in every instance, to bring a lawyer here who had won his case, in an effort to attempt to show to you that there was not disgruntled lawyers here, not lawyers that had been ruled against, but lawyers that had won their cases; so, this was out the window. These lawyers were attempting, in the best way they could, to express to you the influence that this man has created over the judiciary of Florida in those two counties, to express to you that even though they won their case, they no longer feel adequate or qualified to explain to their clients what's going to happen to them.

Many of you are lawyers. I'm a lawyer. To you laymen, I say this:

When I take a criminal case I am paid before I go to court. So, when I go to court, financially, I can't win or lose; I've been paid. So, when a judge tyranically interferes in the operation of my case, the way I plan my case, the way I thought best to represent this man on trial for his life, when that man interfers in there, he disrupts my responsibility and my obligation, he hasn't hurt me one iota. I have lost my case, the man's gone to the electric chair; I've still been paid my fee and will go right ahead and spend it. So, this old thing that the lawyers are mad, that the lawyers don't get what they want, you know, when we lose a case, in the long haul, if you lose a hundred out of a hundred cases, sure, we're going to lose our law practice, but you don't hurt the lawyers in the case when you ride his back, when you complain about where he stands, when you jump on him for leaning up against the table, when you do all these things, you're not hurting that lawyer personally, you're affecting the client whom that lawyer is there trying to do his best for.

Now, these lawyers haven't complained about, they want to take away the independence of the judiciary. They have tried to explain to you that they won their case. They agreed that the appellate court should be the one to rule on the law; they're here talking about the way this man interjects himself, the way this man creates an influence before a jury, that they can't advise their client what to expect, and they, as lawyers, don't know what to expect when they have the obligation to represent and defend the client; this is what we're here talking about. Yes, we have an obligation to respect the judiciary, and pray to God that this man would have thought about the obligation to respect the judiciary when, two or three months after he took office, he ran headlong into everything there was in those two counties.

Judge Leavengood, a Republican Judge, told him, said, "Son, you're coming in under adverse circumstances. Don't attack everybody, don't fight everybody in these two counties until you've had an opportunity to get your feet on the ground."

Yes, he got his feet on the ground, and about five days later, ran headlong into the senior Circuit Judge, and then to all the lawyers in the county, and finally ended up running headlong into the District Court of Appeal, when they told him, flatly, that the suggestion of disqualification in the Charlie Luckie case was good, and in

the next two cases, Charlie Luckie filed the same affidavit, and what does the Judge do? He says, "The District Court of Appeal is wrong. I deny the suggestion, but I voluntarily recuse myself."

Is this a man that's interested in keeping the respect of the judiciary in Florida, or has he become, as Judge Terrell said, so obsessed with the power that he can't see the office he's there to maintain and the obligation to maintain respect for that office. He talked about the penalty. You, as the Court of Impeachment, are well aware that you can't assess the penalty in this case; it's not a criminal case. The only authority you have is to remove this man from public office. They say we're going to destroy this man. I can't agree with that argument, that they would make that argument. We don't destroy this man. We merely say, don't be Circuit Judge any more. This man's still got to practice law, and probably, as a martyr of what he's faced and so forth, he'd have a real good law practice, which is beside the point here.

Now, they say, what was he faced with? Nobody ever gave him a chance to be a judge, nobody ever gave him a chance.

Let's look at the other side of this thing. What are you going to do for your clients, for your business transactions, when the man you've got to face is the most powerful man in the State of Florida, a Circuit Judge; you've got to face him, and just a few months ago, he said, "You are un-American, Mr. Lawyer. You and your family have been allowing swindles to go on," I believe is the exact language - - - "in this county for years, and I'm going to clean it up. I'm going to clean up the court house."

Do you think that you are in position to tell your client, that has a substantial right at that point; "I am sure that I can get a fair trial for you." I don't believe that you would do any such thing. And I ask, just to stop for a minute, how many young judges - - - we assume the judge is young, and I appreciate that, I'm his same age.

How many of us, if we have the respect and obligation for the office which we hold, are going to come sit in this Senate, or come sit in the House of Representatives, or go sit in the Circuit Judge's chair and, almost the minute we are there, going to change the rules of the Senate; we're going to change everything that's done; we're immediately going to change the color of the ties they wear, the coats they wear, the shoes they wear.

How many of us, if we have respect, are going to jump into the Senate the day we get here, and start ripping and tearing over all the customs and mores that have existed in this Senate or that county for the years that it has?

Let's talk about this respect that this young judge had for the judiciary of Florida, and who is going to preserve it.

Now, they would like to make this thing Pasco County Lawyers vs. The Circuit Judge, and for that very reason, we have, as nearly as possible, tried to eliminate everything we could from Pasco County. Yes, Stanley Burnside was eliminated because the judge had harassed and embarrassed him just like he has the others.

Well, we attempted to show the gentlemen of the Senate - - - and lady - - - that this was not simply a Pasco fight, this Judge didn't change his complexion when he went from Pasco to Clearwater; it wasn't changed when he went from Clearwater to St. Petersburg. So, for that reason, we have attempted, as best we could, to bring the testimony from all the counties, in an effort to show you that it wasn't.

Now, we see again - - - we would characterize these lawyers into groups. They say there's a group that, nothing happens to them, but they were embarrassed for the other man. Sure. We wanted - - - we didn't want to bring you the man that had been embarrassed and humiliated, because you and I - - - and I would be guilty of it, too; they said, certainly, I don't blame the lawyer for testifying against that Judge, because he was embarrassed and humiliated; so, we brought the other lawyer there, the one that had not - - - didn't get hurt, and probably was enjoying seeing the Judge romp on the other lawyer because, do you know, when the Judge romps on the lawyer that's opposing me, I know that the jury is getting the idea that this lawyer is wrong, and that that side of the case is wrong, and I'm feeling pretty good about my case. But, if the Judge starts cracking on me, I begin to worry about it, about the Judge. Well, thank goodness, you don't find this anywhere, that I know of, where I practice, as you do here in this case. So, we brought the lawyer that wasn't hurt about - - - or who wasn't hurt with the judge, to explain to you. If they would like, of course, they have the privilege to bring the other lawyers.

What do the lawyers say? They say he was erratic, he was unpredictable, they couldn't predict; they frankly admitted that one day you would go to him, he was fine; the next day you would go to him, and it was altogether a different story.

I submit to you, what does this do to justice in those two counties, in those two counties alone, when a lawyer has to explain the circumstances to his client, when such a situation prevails.

We are here, and we say again, not to say, remove this judge, because he's been inconvenient to the attorneys; we are saying here at this point that we have submitted enough testimony to warrant you to go further on the point, as to whether or not the people of those two counties have a doubt, have a distrust in their judicial system when it comes before this Judge.

Now, we say we get - - - Mr. Masterson says, we get to another classification of lawyers which tend to make this a silly proposition. He calls it the constructed service class of lawyers.

And it just dawned on me that, and he says that they object to this Judge because he goes beyond what the statute requires. You know, they are trying to relate this to beyond the call of duty, but it is not beyond the call of duty. It is interferring in another duty.

I submit to you gentlemen that the House of Representatives and the Senate of Florida and the Governor with veto power make the laws for the people of the State of Florida, for the people of the State of Florida to live under all over the state, and I believe you gentlemen of the Senate, you know that this law shall be applied universally throughout the State of Florida, and I believe that you can understand what happens to the judiciary, to the respect for the judiciary through the distrust for the judiciary when one young Judge takes it upon himself to say, "In my Court, in my Court you are going to be required to go beyond the statutes. You are going to be required to go beyond what the Legislature of Florida requires in order to get an uncontested divorce." An uncontested divorce when nobody is objecting. The wife is not objecting; is not there; and you, the gentlemen of the Legislature, have said what is necessary in order to get an uncontested divorce, and this young Judge knew that he knew what was right better than Judge Leavengood. He knew what was right better than Judge Collins, Judge Wehle, Judge Bird, and therefore, this should be done, and now he knows what is best better than the Legislative branch of the Government. And since the Legislative branch of the Government has failed to put in requirements, he thinks he ought to do that for constructive service, and in two counties of the sixty-seven in Florida, he is going to do that.

Do you recall the little lawyer from Brooksville, Florida, that happened to trickle over into Pasco to make one hundred fifty bucks, and he ran into this constructive service proposition, and his answer was, "Life is too short, and money is too plentiful for me to ever go back to Pasco County. I am used to seeing the statutes of the State of Florida as the law."

I think you can understand that this is not trivia when a man takes it upon himself to say what's right for everybody, regardless of what the law is.

Now we get into the same thing, filing affidavits. The law of the State of Florida for years, and if the gentlemen of the Legislature want to change it, they can, but the law of the State of Florida for years permitted attorneys to file affidavits as to attorney's fees. The law has permitted the parties for years to object to the attorney's fees if they think it is too large, and then the Court will require testimony, but in the case that we have talked about here for ten days, there has been no objection; there has been no objection raised except by the Circuit Judge who decided to go above and beyond and to the exclusion of the law and look into it himself, be the judge of all.

I submit to you again it calls to my mind Judge Terrell's words when he says that an impeachable offense of a misdemeanor in office is when a Judge becomes so obsessed with office that he thinks there is no power above him, and I submit to you this is the case.

I would like to take just a second and review some of the portions that you did when we started this case some two weeks ago, and I would like to just read briefly three or four of the places, not all of them, in your deskbook.

On the first page, it says, "The Governor, Justices of the Supreme Court and Judges of the Circuit Court shall be liable to impeachment for any misdemeanor in office." We would keep harping from the Respondent's side this man has committed nothing morally wrong, no moral turpitude committed, and no crime. I think the law is well settled that misdemeanor in office does not require violation of moral turpitude for conviction.

Judge Terrell says, "Under English practice many offenses were impeachable which were not punishable as crimes at common law. The State Constitution does not attempt to define what offenses are contemplated by the phrase, 'any misdemeanor in office,' neither does the Federal Constitution attempt to define what offenses are contemplated by the phrase 'other high crimes and misdemeanors.'"

Then we go over on Page 7, where he says in re the Holt matter, 93 Southern 2nd 601. Judge Terrell says, "So there can be no doubt that a Circuit Judge may be impeached when his personal conduct becomes such that the public loses respect for and confidence in him."

We go on, and I think we begin to reach the problem that we have here. It is not whether this Judge has committed some heinous crime, stolen money or any of these sort of things. I think it all goes back to Judge Terrell's statement: "Now it is perfectly apparent that impeachment is directed to a political right, that the office held by the accused is a political incident, that if successful the impeachment imposes a political forfeiture and is designed to suppress a political evil but the judgment is reached by the judicial process and is the produce of judicial scrutiny."

A political evil, placing that Court, just as in those counties, in a position of untrust or unpredictable or erratic or a position where the people don't know whether or not they are going to get their substantial rights. We go on a little further and Judge Terrell says, "From these observations I cannot escape the conclusion that impeachment is a proceeding singled out by the Constitution to reach a peculiar class of offenses, peculiar to a limited class of high officials, and because of its peculiar fitness the Senate was clothed with power to try such offenses."

Let me interrupt on Page 13. He says, "Now, all that has been said could be crystallized in this - - - in our country public office is still a public trust and the higher the office, the more serious and sacred the trust; in the lower echelons violation of the trust is ground for suspension by the governor; in the higher echelons it is ground for impeachment by the House of Representatives; in either event the Senate is a judicial umpire or court of impeachment before which the charges against the accused must be established to its satisfaction."

We would submit to you gentlemen that even though we have presented to you for ten days opinions along the line, a Circuit Judgeship is the most powerful man in the state. It is a sacred trust, and we have to ask you the question whether or not this young Judge, as he is characterized, has violated that trust by a sense of his own knowledge, by a sense of his own thinking of what is right and wrong as opposed to almost everybody in the county, including the judiciary of those two counties.

We can go back briefly, if I would, in closing, to the opening statement that was made, and we pointed out then that a misdemeanor in office can be an act prejudicial to the public interest. It can be an act which directly or indirectly affects the public welfare of those two counties. A misdemeanor in office can be for arrogance, for the fact that the accused becomes so obsessed with the idea that he owns the office that he forgets all powers above him. It can be if the conduct of a Judge is such that the public loses respect and confidence in him as a Judge. It could be acts that if it were done by an ordinary citizen on the street would not be offensive, but because they are done by a man who holds a sacred trust and the power that reposes in the Circuit Judgeship, it would be a misdemeanor in office. Impeachment would lie for a course of conduct which brings the office or officer of the Circuit Court into disrepute or displaces public confidence.

We feel that we have charged those in the Articles where you voted that we had charged some of those misdemeanors in the Articles. We believe that at this point of the proceeding we have given you sufficient evidence to go on with this matter, that this Court has overstepped his authority, has created an influence in those two counties which puts public distrust in the Circuit Court.

We talked about reputation. What kind of reputation did you have in your community? You have got one or two men, we all have, that would say that we were dolts, but can we go back because they are political enemies of ours or business enemies of ours or law practice enemies, cow enemies, whatever business we may be in, but what is our reputation in our community?

Can you go in, can anyone go into your community and go to at least a hundred, I believe some of our witnesses have said, of the three hundred lawyers that there are in Pinellas County and say his reputation is bad, unpredictable, erratic? Can you go into Pasco County where all the lawyers say it? Can you go into Clearwater, Florida, where the Bar of one hundred five - - - Lloyd Phillips says eighty of them, I believe I have talked to, and they all say the Senator is bad, or the lawyer is bad, or the Judge is bad.

Now, what influence or what confidence exists there if those number of people, civic leaders, responsible people, that many of them have the same idea of the poor reputation of this man. What trust is there in the Circuit Court of the Sixth Judicial Circuit as presided over by this Judge?

We submit to you gentlemen, and my colleague will close, that we have presented a case which warrants at this time your denial of the motion to dismiss, and I thank you for your attention.

MR. O'NEILL: Mr. Chief Justice Drew, members of the high Court of Impeachment: We are here on an occasion that is not a very pleasant task for you to perform. Nor is my job a pleasant task.

I have compassion in my heart for many people that I do not agree with. I have compassion in my heart for this man who is being tried by you sitting as a high Court of Impeachment. I have compassion in my heart many times for many things that I have to do as an official duty and the obligations that I must perform. I think that we are each charged as individuals, as God's children, to perform those obligations and to do those things and to say those things which we think are right within our hearts and minds.

A Circuit Judge's position is an awesome position to be in. He has awesome powers. He also has awesome obligations. He is a man that can take a life by a stroke of the pen or the saying of a word. He is a man that can take your property and my property with the stroke of a pen or the saying of a word. He is a man that has the destiny of children in broken homes, adoption proceedings and other matters. He is a man that has the power to take your property away from you for the use and benefit of a public purpose in eminent domain. He is a man that has a charge and the responsibility under our system of jurisprudence to do almost anything that would affect your life, your children's lives, your friend's life, your loved one's life, your fellow man's life. He has all of these powers, and properly so. He is elected for a six year term.

Richard Kelly was elected in 1960 to take office in January of 1961, and he assumed that post.

Just to cover chronologically with you some of the things that I think are important here, there was a young colored boy, approximately nineteen years old or eighteen years old. The testimony shows that he was at best a high grade moron. And he had committed a heinous crime.

Judge Kelly in 1961, when this colored boy was indicted, and later in the year of 1962 picked out an attorney to defend that man along with two other co-defendants. Judge Kelly had that obligation to do that. He had that responsibility to do that, which he did, but it is also his obligation and his responsibility to see that that man, under our jurisprudence, had the best counsel that he could find. He had the responsibility to pick out an ethical individual, an ethical lawyer, if you will, a person of high character, a person trained and learned in the law, experienced in the defense of such persons, and he appointed that man. He appointed him to defend Willie Charles Hill. During the conduct of that trial---and it's in evidence over there---during the conduct of that trial you heard related here by Mr. Luckie exactly what happened. Here is a Judge who on one hand says to this high grade moron, "You are entitled under our laws to that defense which is guaranteed to all Americans, and I am giving you the best man that I can find as a practicing attorney before the Bar of this Court in Pasco County, Mr. Charlie Luckie, Jr."

Now, what happened? Mr. Luckie undertakes the defense of this colored boy. He goes to trial and he is convicted of first degree murder without the recommendation of mercy before the Jury in Pasco County. He has been in death row since July, 1962.

Judge Kelly had a further responsibility in this case. If he thought that at any moment that Charlie Luckie was misconducting himself or not giving that colored boy a proper defense, or at any time that he thought for a moment that anything that that lawyer did at that time was contemptuous to that Court or contemptuous to anybody in that Court, to call and dress down that lawyer, to call him in Chambers and admonish him.

And he had a duty and obligation to say to that colored boy, "You didn't get a fair trial because you had an unethical lawyer, a contemptuous lawyer, one that I have no confidence in."

He had a further obligation if he thought that, that he would grant that colored boy a new trial of his own motion, not the motion of the State, not the motion of the defense counsel, but of his own motion. I ask you: Did he do it? Did he do it?

Let's review the disqualification petitions that were filed by Charlie Luckie, Jr. February 1, 1961, Mr. Luckie suggested that Judge Kelly disqualify himself in the case of State Road Department vs. Simpson. It had the same allegations that were contained in another petition for disqualification in the case of Haymons vs. Groover. That was March 15, 1961. Yet, in March of 1963, with the same allegations and only one thing having transpired subsequent to the time in February 1, 1961, and subsequent to March of 1961, only one thing had transpired. The same essential allegations were in all three of those petitions for disqualification. The individuals, saving and excepting the clients, were the same.

If they were contemptuous in March of 1963, how in the world did they change between March and February of 1961? What occurred? What occurred? Do you know what occurred?

Mr. Luckie, along with nineteen lawyers in Pasco County, and there are only five more members in that Bar; twenty-three is the total that I recall - - - signed a petition to change Pasco County into the Fifth Judicial Circuit.

You heard Mr. McClain testify in 1959 it was suggested, and every member of the Fifth Judicial Circuit and including the Sixth Judicial Circuit agreed that it would be done save and except one individual.

You heard Mr. George Dayton and Mr. Larkin refer to the fact that as early as 1941 or somewhere thereabouts, that there had been talk of changing Pasco into the Fifth Judicial Circuit because they had more economic affinity with that area, was more nearly like their county; the people were similar; their livelihood was similar, and how they sought their livelihood was similar. It was like - - - and they weren't separated by Hillsborough County, and didn't have to go across to Hillsborough County to get to the County Seat of Pasco County from Clearwater or St. Petersburg.

Now, here's what changed, here's what changed: Senator Covington had had some conferences relating to the Circuit changes, and on March 15, if I recall correctly from the telegram, he decided that he would not introduce the legislation in the 1963 session - - - and the session hadn't even commenced; it commenced on April 2, as you all very well know. Now, that's what changed.

The Zephyrhills speech that Judge Kelly had made, he said that the lawyers were sinister; and those things would change.

Now, we remind you, there were three petitions for disqualification, one in February, February 1 of '61, one in March of 1961, and then, one in March of 1963. Essentially, the same allegation, essentially the same allegation - - and if you would like to check them, you might do that. Not only that, but Mr. Luckie had gone to Judge Kelly and said to him, on March 14, "Judge Kelly," - - - as a

man should do, he went to see him, he said, "Judge Kelly, would you voluntarily recuse yourself from the hearing of this case; that since the circuit change and the bad feeling that might have been engendered since the Zephyrhills speech, on February 26 of 1963, I have a fear, my client has a fear that he will not receive a fair trial before this court."

Now, let me point out something else, and I'll try to put this in terms - - - most of you lawyers will understand this, but this is for the laymen. It was Judge Kelly's obligation and his duty, and only one thing was before that court on the petition for disqualification, and only one thing, as to whether or not that petition for disqualification was legally sufficient under Chapter 38 of the Florida Statutes, as adopted by this Legislature. Nothing else. Not the truth, not the falsity of the affidavit. Another interesting point: If Judge Kelly had disqualified himself in that particular proceeding, the contempt order could not have been entered, because he would have lost jurisdiction of that particular case. Therefore, he would not give Mr. Luckie, he would not give Mr. Luckie an answer as to the petition for disqualification, he wanted to hold him in contempt and hold him up for ridicule, and it was affirmed by the District Court of Appeal, by some thirty-three-odd pages of a written opinion. And in the face of all of the law that this man had at his disposal, of the most respected practicing members of the Bar in Pinellas County - - - not Pasco County, but in Pinellas County; Richard Earle, member of the Board of Governors of the Florida Bar, who is interested in justice, had briefed the question; Sam Mann, Jr., Victor O. Wehle, a former Circuit Judge; and what did Judge Kelly say?

He said, "Mr. Wehle, I differ with you. I don't care what the Florida law is; I found this Kentucky case." He flouted Florida law and said, "I am not going to follow that. I'm going to follow the Kentucky law."

My friends, he is not a Circuit Judge in Kentucky, he is a Circuit Judge in the Sixth Judicial Circuit in Florida.

All of the witnesses, all of the witnesses that have been here - - - there's been great criticism because Stanley Burnside didn't get on the stand. You heard Jim Swain testify. He testified for some good length of time here. Why should we burden you with repetitious stuff when you already had it?

And then, let's talk about Mr. Swain.

You know, the Respondent has tried to make out that these lawyers were attacking Kelly. I submit to you that they were defending their very livelihood, their families, their property and everything that they have and hold dear and true to themselves, the right to practice law in that community of Dade City. They were defending themselves. They were defending their very livelihood.

Mr. Swain made notes, yes, of course he made notes, and I think he stated to you why he had made notes; he thought that he might need those notes in order to defend himself, not to attack Judge Kelly. Never once to attack, but to defend himself. Every man has the right to defend himself. He has to defend those things which he owns, those things which he participates in, and he has to defend those things which he thinks are right and proper, whether it be popular with the Circuit Judge or not, and that's what these lawyers were doing.

You heard the testimony that three lawyers left Dade City, three lawyers, one of them up here at Chipley, Mr. Clawson; Mr. Wolfe, at Cocoa Beach; Mr. Edmunds, at Auburndale, or Lake Alfred, in Polk County.

Now, you lawyers know this - - you laymen may not know it, but when a lawyer settles down into a community, it takes him many years to build a practice, and to build a reputation, which I'll talk to you in a moment about.

It takes many years to build a reputation as a lawyer, and when you pull up your stakes, and you take your children out of school, and you take your family, and you sell your home, and you take all of your worldly goods, and you move to another community, and you take your reputation, as far as it may go, and as far as you are acquainted, and you remove yourself from that place where you have practiced, you're losing a property right, and a valuable property right, the wherewithal to make a living and to support your family.

It's serious, my friends, and any time that nineteen lawyers out of twenty-three agree, I think that it's a pretty good score. So, we had to put on those lawyers. We had eight of them from Pasco County on the stand. There are others. We didn't feel like it was our job to be repetitious.

Three to one, three to one of the lawyers placed on this stand came from Pinellas County, not Pasco County, not Pasco; three to one.

You heard testimony as to the judicial temperament of Judge Kelly; Judge Collins, Judge Bird and others, some of them attorneys.

You recall what they said, possibly, better than I, that he lacked judicial temperament, he was unpredictable, he was capricious, erratic, wouldn't follow the law, wouldn't listen to the law.

When you were arguing the law, if you had a case in point, he says, "I'm not going to follow it. I don't care if that is the law"; in net effect, that's what he said time and time again.

These lawyers that testified on this stand were not disgruntled lawyers, because they lost their case; they came here under subpoena to testify to you the manner in which it was done. There's been some discussion that it could be taken care of on appeal, and I submit to you that that's the furthest thing from the truth.

I can say a word to you, as I am talking now, and I can say the words like this (Speaking louder), but when it comes out on the printed word, the same words will be there. The cold, printed word, or typed word is not the same. The mannerism in which it's said, the inclination of the voice, the facial features, the frowns, if you wish, the flashing of the eyes, many things occur, but when it's in cold print, it won't show up in that appellate court, won't show up. So, you can't correct these things on appeal, I tell you. It's not possible.

Why is it, why is it that when women, seeking divorce, taking a seventeen or eighteen-year old daughter with them, to go into that man's court room, and to be harrassed until they are in tears, where the seventeen-year-old or eighteen-year-old daughter is questioned - - - he says, "Why do you know your mother hasn't been outside of the State of Florida when she had a Florida driver's license;? worked there? Social Security and other evidence? "Have you slept with her, and do you sleep with her? How do you know she didn't leave Florida?"

How ridiculous can you be.

Mr. Altman's testimony; bond validation; New Port Richey; had a deadline to meet; hard-working Judge Kelly comes down there on the nights, to hear this case, but what does he do? A normal bond validation case, where there's no contest by any taxpayer; the State Attorney appears, and he represents the State of Florida and the citizens of that county. It takes about five minutes. What was the testimony in this case?

It went from 8 till 10:30 in open court; and then an additional period of time in the Chambers, until after midnight, where Judge Kelly practically took over. The entire transcript is made up of Judge Kelly, the compulsive talker:

"How do you know this was delivered by the postman? Did you see him bring it? Was he dressed in a blue suit? How do you know it came from the Government? How do you know that New Port Richey is a town or municipal corporation under the laws of Florida?"

"Well, because we have the statute here."

"Well, is it certified?"

"No sir, it's not certified, but it's an exact copy."

"Well, how do you know it's an exact copy? Show me this chapter in the Florida Statutes that governs bond validations and revenue certificates for the improvement of sewers and water lines. Show me the line, show me the paragraph, show me the page, show me the section. How do you know that's part of the official records of New Port Richey? Were you there?"

"How do you know that this letter is a carbon or exact copy of the one that was returned to the Home and Housing Finance Agency, in Atlanta, Georgia?"

"Well, it's signed. We got it in the mail. We sent the other one back, as we were instructed to, in order that we might have this $350,000 grant."

"How do you know that?"

The most ridiculous question you could ever imagine, most ridiculous.

Now, why, why do we keep going back to trivia?

When a judge is a judge, he will sit patiently and listen to the argument of counsel, whether he agrees or disagrees. He does not interject himself into the case. He listens patiently, and he makes his ruling. If he desires additional law, he will ask counsel to prepare that memorandum brief - - - a memorandum brief, so that he might be better advised on the law.

Judge Kelly says: "Well, if you don't amend that complaint like I want it, I want you to file me a brief on the complete Chapter 84, the mechanics lien law."

Now, I submit to you that God, man nor the devil knows what that chapter means, as it exists today, and I doubt if there's any attorneys in the State of Florida that could write you a brief on it, and tell you what the law is, "but if you don't amend your complaint, then you file me a brief, but if you amend the complaint, you don't have to file a brief."

Dictatorial, tyrannical; accusation that Mr. Masterson said that we had to have an independent judiciary, one that couldn't be bought with favors, and one that couldn't be influenced, and I couldn't agree with him more, but I'll tell you, the lawyers' creed in this state - - - and the vast majority of lawyers in this state abide by that creed, that they are the officers of the court, and their chief concern in life is the administration of justice, and when administration of justice falls down, the people lose confidence in their courts.

My friends, we haven't got much left in this country when that happens.

The question that you should decide in your minds, if you return this man to the Bench in the Sixth Judicial Circuit, if you do, ask yourself this question:

Would I want my property, would I want my wife and my children, would I want my life to be handled in any such manner as this man would do it? Would I want him to be a judge in my circuit? Would I want him to be my Circuit Judge? Would I want him to have all the vast influence over my life that he has? Because, my friends, the citizens in that Sixth Judicial Circuit, in Pinellas and Pasco County, are citizens of Florida, too, the same as your constituents are your citizens in your county, and they have rights.

The question of rotation of judges, of allowing him to sit in Pinellas, rather than Pasco, three to one, my friends, three to one of the lawyers came from Pinellas County.

Did that solve the problem? I submit to you it did not.

Now, he talks about the various constructive service, which has been amply covered by Mr. Jones. I shan't go into that with you.

This man has been Judge for two years and five months. He's elected for a six-year term. The voters won't get an opportunity to vote on this matter, if he be returned to office, until the spring primary of 1966, and the general election of the same year, and will serve in that capacity until the first Monday after the - - - the first Tuesday after the first Monday of 1967.

Do you want to submit the people of that circuit to that type of judge?

That is your decision that you must decide on this motion to dismiss, for, if you do dismiss it, then he goes back and he's reinstated. If you should choose to hear further evidence, to have him on the witness stand, so that you might judge his demeanor, so that you might hear the cross examination and the direct examination, then you should vote "no" on the motion to dismiss.

If you will recall, I asked that Judge Kelly take the stand just before I announced closed, Your Honor - - -

MR. NICHOLS: Your Honor, I object to counsel commenting any further in that regard.

MR. O'NEILL: I'm just saying what the evidence shows and what's here, Your Honor.

CHIEF JUSTICE DREW: I sustain the objection, Mr. O'Neill. You are not allowed to comment.

MR. O'NEILL: Very well.

Judge Leavengood offered this young man advice. Did he take it? Judge Wehle offered him advice. Did he take it? Mr. Earle offered him advice, which he solicited. He didn't take it.

Mr. Sam Mann, Jr., offered him advice. He wouldn't take it.

They had a truce, they had a truce, but then he became vindictive again.

His reputation is bad because the lawyers can't get along with him, and he can't get along with litigants involved, and when he can't get along with the lawyer, my friends, if a lawyer has any practice whatsoever, he can't get along with a segment of your people in your county.

Every lawyer has clients, and every client is a citizen, and if you get all the lawyers in a given county, they represent all the litigants in that county, for whatever legal business they might have.

So, if you have nineteen of the lawyers, you have a vast majority of the people in that particular county. If you have the lawyers in Clearwater - - - Mr. Cooper, A. T. Cooper, Jr., another member of the Florida Bar Board of Governors from that circuit, said that he had talked to ninety of the one hundred five lawyers in Clearwater, he had talked to some twenty-five or thirty, as I recall, of the lawyers in St. Petersburg - - - he happens to practice in Clearwater, but he had talked to some twenty-five of them in St. Petersburg; and this man's demeanor on the Bench - - - not his decisions, but his demeanor on the Bench was bad.

The judges said he didn't have judicial temperament. Judge Collins, a Republican judge, who went on the Bench at exactly the same time that Judge Kelly did, said he lacked judicial temperament, and you recall, so on down the line; a total lack of grasp of legal principles, wherein he told Judge Hobson that "I'm going to dismiss this complaint, but I'm going to leave the injunction stand."

The minute the complaint was dismissed, the injunction - - - he would have no longer any jurisdiction, would have no right to maintain, but he said, "I'm going to make him do this, whether that's the law or not."

He has a total lack of understanding principles of law.

Much of the defense on behalf of the Respondent has been taking the attack in the cross examination, and I pointed it out to you so you might realize what it was, and you possibly did, that if you came out with the ultimate decision before Judge Kelly, it mattered little how you got there, or how he treated you.

That's the defense, and that's what they said:

"You won your case, didn't you? He signed the final decree of adoption, didn't he? He signed the divorce decree, didn't he? You came out all right, didn't you, ultimately?"

My friends, that is not American, because the end does not justify the means. I think it is so fundamental, in our system of government, that the end never justifies the means by which you arrive there. If you do it properly, you don't have to worry about the means, and the end will come out all right. Don't worry about the end, worry about the means.

Now, I will not have an opportunity to speak to you any more. Mr. Nichols, under our system, has the right to close.

I would simply ask, on behalf of myself and the members of my team, that for those things that Mr. Nichols, or whoever might argue for the Respondent, says, that I may have omitted in my human frailties, to make excuses, if the Board of Managers had an opportunity to say anything further, what would they respond?

I ask you to think of that, because I won't have the opportunity to rebut anything that Mr. Nichols says at this time.

I ask that you keep that in mind, and I caution you that, do not be misled by any type of material that is not in evidence. There was a motion to dismiss that was before this body early in this session, some two weeks ago, wherein evidence was argued that was not then before the court, and I ask you to remember what was in evidence and what is in evidence in your deliberations.

MR. NICHOLS: Mr. Chief Justice, distinguished members of the Board of Managers, and members of this Court:

Mr. O'Neill chooses to talk about America. Well, we'll just start right there.

In America, we have a democratic process which is the most wonderful process that any country has ever devised. We have, in this process and in this wonderful country, chosen to let the majority in any type of vote rule this country.

And what is the Board of Managers doing?

There has been a movement, every since Judge Kelly was elected, to immediately discredit him, and to do anything they could to get rid of this elected official. And every single move that has been made, has been made by a group who do not want the majority of the people in that circuit to have anything to say about it.

The changing of the jurisdiction was going to be done legislative-wise the changing of the circuit was going to be done legislative-wise, without any referendum; and every move that this small group made was to prevent the people from having anything to say about it. This very impeachment proceeding that we are now in - - - they are still asking you to remove this judge right here, without giving the people any chance to say anything about it. And that's just exactly the steps that they've been taking right down the line.

Now, they want you to now do what I think is the prerogative of the people, and that is to elect their circuit judges or put them out of office.

Now, if this judge is as bad as these few lawyers have said, you can be sure that the job's going to get done at the polls, and they've done a pretty good job of discrediting him in every way known to man and a few new ways. And so, if he's discredited, and if he's as bad a judge as they say he is, they shouldn't put this burden on you. You should say, well, the people elected Judge Kelly and we will send him back down there and let the people who elected him take him out of office if they want him out of office.

I submit to you one question: Suppose the people want to keep this judge. They put him in this office, and suppose that he is a pretty tough judge, that he runs a tight ship. Aren't the people entitled to elect that type of judge if that's the type they want? Isn't that their prerogative? Suppose they say they like this service that they've been getting. Suppose they say they like a judge that will investigate some attorney's affidavits in awarding a $25,000 fee, to see what lawyers are doing when dipping into estates about fees.

Isn't that their prerogative? Or is it your prerogative to say, no, we're not going to let the people do anything about their elected official or have anything to say about it. We're going to accommodate this group of lawyers who've been trying every way that they can to discredit Judge Kelly and put every roadblock in his way.

Now, I want to discuss with you another thing for just a minute. I want to compliment the Senate, and tell you, on behalf of this Respondent, that I have every confidence that this case is going to be tried in an honorable, fair and just manner.

I've calmed this man down a number of times. He has fears. I said, "You're going to be proud of the Senate, and you have nothing to worry about because they're going to give you your day in Court, and they're going to be fair and just about it." It makes no difference to me - - and I told him a half dozen times - - that this Senate is composed of primarily Democratic Senators because I'm going to be just as proud of your decision afterwards if it was all Republican.

Now, then, Judge Leavengood told you that the case load per judge in the Sixth Circuit was approximately twelve hundred to sixteen hundred cases, or around sixteen hundred cases.

Now, during that two and a half years, that would be approximately four thousand cases that are tried, or handled, and have been resolved with good results.

Now, then, the only cases that they have brought to you are the complaints about thirty-four cases.

So, I ask you, in your deliberations and consideration, to give credit where credit is due; that out of the four thousand cases there's better than four thousand of them that have been decided competently and fairly, squarely, and without any complaints.

Now, you can be assured, with all of the investigation that they have been doing, with all of their investigators,

and going down, bringing all these people up here, as well as the last six months, they've combed the bottom of the barrel, and combed everything that they bring to you; any type of a criticism, because they've even brought a bunch of frivolous criticisms, things without any merit.

So, you can be assured that if there was anything else, they would have had it here.

So, then, I ask you to consider carefully, give this man credit where credit is due.

I would like for you to consider these four thousand cases, we'll say the four thousand cases that have been resolved and decided by this Judge is the length of this yardstick, thirty-six inches.

Now, then, if you will take those thirty-four cases that they have come in here criticizing about, and divided that - - - and I have the division, if you want to redo it - - - you will find that this criticism amounts to one third of one inch on this thirty-six inches, and I put that one-third right here (indicating on yardstick).

Now, here, gentlemen, (indicating with yardstick) is the good work that this man has done in handling these cases. And right here (indicating the other end of the yardstick) are the thirty-four cases that they complain about.

Now, in fairness, are you going to put this in the scales? Are you going to put the good work that this man has done in the scales along with this one-third of an inch? I think you are, and I think you're going to give him credit where credit is due.

Now, then, here's the work that he has done during that two and a half years (Placing yardstick on end of counsel table).

During my argument I would like to just let this yardstick sit there so you can take a look at it, because I think that there is some of the finest work - - - and may it please you, those are not pennies, either, put together. Those cases are dollar cases, because they have been resolved, decided, and without any complaint whatsoever about it.

Now, what else have they got along this same type of comparison?

They have brought you thirty-five lawyers who have complained. There are four hundred ninety-one lawyers in Pinellas, and twenty-three in Pasco. That's a total of five hundred fourteen lawyers, and in addition you've heard the evidence that many other lawyers came from the Tampa area. We'll just say another hundred. That makes a total of about six hundred lawyers.

So, they brought you some complaints. And pardon my language, but there was a lot of bellyaching of a few lawyers who have lost some cases. And there's only thirty-five of them out of six hundred.

Now the burden is on the State of Florida to prove this case. If the six hundred lawyers down there are all disgruntled, they would have them up here. The presumption is, of course, to the contrary, when they fail to bring them in or prove it.

Now, then, what else is there? There is Pinellas County with three hundred seventy-four thousand people, and Pasco County, with thirty-six thousand people. That's four hundred ten thousand people.

I want you to tell me, and I challenge them to show you—and if you will recall, they have not brought a single solitary member of the general public before you to testify. Out of four hundred ten thousand people who chose this man to be their Circuit Judge, they have not brought you one single, solitary person out of the general public.

Now, the Managers want to tell you that this Judge's court is in disrepute with the public.

Now, you men are responsible to the public, and if the general public has such a bad opinion of this Judge, where are they?

I ask again, where are they?

The State has absolutely failed to bring you any of the general public.

Now, the general public are not lawyers that have lost cases or don't like the way something has been done. The only member of the general public who testified was somebody's secretary. I forget what the girl's name was. She was the only one, and she was associated with a lawyer and was called to verify another matter which had nothing to do with the Judge's general reputation.

Now, keep in mind the burden is on the State. The burden is on the Board of Managers. The burden is on them to prove their case to the exclusion of and beyond every reasonable doubt.

Now, what are some of the things that they have not proved to you? It is very conspicuous to me, many of the things that they have not proved.

There was absolutely no evidence either as to the number of appeals or as to the percentage of reversals in Judge Kelly's cases.

The record of appeals is both as to number and the success of them. They have not proved that, and that would have been very easy for them to prove, wouldn't it? If this Judge's conduct or his rulings were bad, they would have a lot of reversals and a lot of appeals, and they would have had that evidence in here if it were true.

There is absolutely no evidence or proof that Judge Kelly had convicted any attorney of contempt.

Now, follow this one minute. There is no proof in here that he has held anybody in contempt or collected any money for contempt.

They had one lawyer in a divorce matter that he tried to straighten out and then called him up the next day or that afternoon and relinquished his contempt citation. And they had a conversation about it and that was all.

In the Charlie Luckie matter, Charlie Luckie was not held in contempt. The Judge issued "A Rule to Show Cause" and set a hearing three or four days hence in the matter to decide whether or not Luckie should be held in contempt. The District Court of Appeal stopped all proceedings before the contempt hearing was ever held. The hearing hasn't yet been held, nor has Charlie Luckie been held in contempt by Judge Kelly.

Now, note that the Luckie appeal is before the Supreme Court of Florida where it should be, and we don't know yet what the Supreme Court has ruled or not ruled in that matter. That is where the case ought to lie.

By the way, on that contempt, they want to rely on the advice given by Victor O. Wehle and two other lawyers, Mann and Earle. And here was Judge Kelly doing his best to get advice, trying his best, not going off half-cocked about it, but in their very opinion Judge Wehle said, and I quote, "In our opinion the supporting affidavits are definitely insufficient to support the suggestion of disqualification," and he had another lawyer working with him in rendering advice to Judge Kelly.

So, it just looks to me like the legal advice he was given wasn't too great in that regard, but nevertheless, Judge Kelly went to the books and did some additional research. He found two Florida cases, not only the Kentucky case, but it is significant that the Managers don't

give you the two Florida cases where it says that where lawyers go beyond the scope and put in trivia and go outside the issue that is involved, that the Court may review the matter and determine whether or not there has been contempt.

There is a great body of law about contempts and there is nothing mysterious about it. You don't have to call the Senate into special session to try an impeachment matter over a contempt proceeding whether it be of a party, a lawyer, or a witness.

As a matter of fact, they have you sitting here as every type of a court except a court of impeachment. You have been a domestic relations court. You have been trying divorces. You have been trying all types of foreclosure cases. And you have been trying everything on earth up here as a Court of Appeal; you have been reviewing these matters, and I tell you I don't believe that that is the process of impeachment.

Now, there is absolutely no proof of a delinquent character of this Judge. The proof is to the contrary, that he is industrious, that his calendar is up to date, and so on.

There is absolutely no evidence of a single reversal for this Judge's conduct; that is, his conduct of mistreatment of lawyers or parties or his conduct of interference or improper conduct on his part. There is not one single case that he has ever been reversed for that. Yet there is a great body of law in which many Judges have been reversed for improper conduct.

And they want to say: Don't go through the appeal process; just impeach him.

Now, there is absolutely no evidence that this Judge is not industrious. The record shows to the contrary.

There is absolutely no evidence of his intemperance of any kind whatsoever. There is absolutely no evidence of proof about bad character. The proof is to the contrary, that this Judge has a fine character.

How many hundreds of jurors has he empanelled who have appeared before him in the Court, who have seen his conduct and his attitude toward lawyers? Have they brought you a single one of those? No, sir, not a single one.

If they are looking for impartial people, wouldn't that be somebody to bring to you—who hasn't got an axe to grind? Who hasn't lost a case? Who hasn't got a fee involved—but who is simply a member of the general public who has been in those Courts?

How about the litigants? Did he bring you a single litigant? Not the first single one.

They want to say, oh, they brought in two cases in which somebody was emotional in a divorce matter. Now, gentlemen, it is well known that a divorce matter is an emotional thing anyway. People are all torn up over the thing. Children are involved, and the slightest thing may cause a scene.

Are you going to impeach a man because some woman cried in front of a domestic relations court? Ask in the Circuit Court. Certainly it is an emotional matter.

How many hundreds of witnesses have testified in Judge Kelly's court? Now, the witnesses that come into these cases, have they brought any of those? In all of the cases down there, have they brought you any witnesses? Not a single one.

How many hundreds of spectators? They have been talking about spectators, about the Judge's conduct. Have they brought you any here? Not a single one.

How many Bailiffs or Court attaches? The Bailiffs that stand in the Courtroom every day, have they brought you any of those? They haven't brought a single one.

What about the Clerks? Or people who observe?

Now, your solemn obligation, of course, under your oath is that in order to find this Judge guilty, you have to do so beyond and to the exclusion of every reasonable doubt. Can you men not have a reasonable doubt when they don't bring you any members of the public? When they don't bring you any witnesses or jurors or Bailiffs or Clerks?

Isn't there some reasonable doubt about this matter?

These people were all available to them. The law tells you that the inference is that their testimony would be in Judge Kelly's favor if they are not here. This is part of the State's burden of proof which they have not met.

Now, it is quite obvious that the State has done its best with all that they can rake and scrape together. And I want to go back momentarily - - -

How much time do I have?

CHIEF JUSTICE DREW: You have eight minutes.

MR. NICHOLS: Thank you, sir.

I want to go back for a moment. I wish I had time to discuss these things item by item. But take this constructive service thing. Here is the statute on that. Diligent search and inquiry must have been made to discover the name and residence of such person, and the same is set forth in said sworn statement as particularly as is known to the affiant, and then it goes on and on with the various things that the Court should inquire into or that the lawyer should do.

Now, the Judge wasn't going beyond this. He was simply inquiring to see if the statutory requirements had been fulfilled, and, gentlemen, who was he usually making this inquiry for? He was usually protecting the interests of the absent party.

He wasn't on the side of the First National Bank or the First Federal foreclosure. He was trying to find out if that person who is absent, if his rights were being protected, and they want to impeach him for it. He simply was requiring lawyers to do what they should do under the statute.

I want to momentarily go back with you before I do this. I want to talk about the Willie Hill case a minute.

Charlie Luckie sat up there and he talked to you men for an hour. He read from the brief. He discussed this case. He made the same argument that he made over at the Supreme Court. It is quite obvious that he was making the same argument, going right down the same brief.

Now, for more than a year he said that he had gotten along swell in Judge Kelly's Court. And the first time that Judge Kelly ruled against him about some confession that this boy had made (and he had made it on two or three different occasions), the first time he ruled against him, I'll be dadgummed if he doesn't blow higher than a kite and start all over again with these impeachment proceedings and say that it's outrageous. And he comes here and he reads to you for an hour and a half on a legal proposition.

You know the Attorney General has got a similar brief. I could sit in that chair and argue the other side of that matter for an hour and a half, and then you could probably make some kind of intelligent decision about an appeal matter.

But are you an Appellate Court? Are you sitting here as Appellate Judges? Are you going to review this crim-

inal matter? Every matter, every case that has ever been tried has all the cloaks of protection about it that you could possibly have.

I don't think you ought to sit as an Appellate Court, but I am not going to indulge in such a reply either as Mr. Luckie has tried to give you for an hour and a half as an appellate advocate.

Now, gentlemen, let's go back to the impeachment cases of the past. I want to go back for a moment to what constitutes grounds of impeachment. I told you we were going to renew our motion to dismiss at the conclusion of the State's case.

The first Federal Judge that was impeached was John Pickering. You remember I told you he was the fellow that was drunk and they had to hold his head up in an Admiralty case, and he had been drunk for more than two years, and they impeached him. These are the type of charges that are impeachable offenses.

The second one was treason against the Federal Government, and the Judge abandoned his office.

The third one was Archbald, who was corrupt in office. He was selling his decisions and was removed for it.

The fourth one was Halsted Ritter, who was impeached for fraudulent income tax violations and the acceptance of large sums of money from lawyers, one of them being $5,500 marked money that they found in the safe deposit box.

And then we have the Judge Holt trial, which is the only other trial that you have had in the Senate. It is the only trial before the Senate in the State of Florida, and Judge Holt was acquitted by this Senate. And there he was charged with appointing friends as receivers. One of them got a $27,000 receiver's fee, and he and the friend went to Europe together. Another one was a lawyer he appointed in an estate matter, awarding $64,524 out of one estate which was an uncontested case. He was charged with borrowing money from attorneys who practiced in his court. He was charged with intoxication while driving an automobile and seriously injuring innocent people.

Now, those, I think, are serious charges, but has there been any such thing filed against this man? There has not.

So a Democratic Judge was exonerated, I am sure, after a fair and impartial trial, but I have sitting here a Republican Judge who is entitled to the same fairness, and that's all we ask of you, the same fairness. We don't ask from you more or less because he is not entitled to one single thing better than Holt received, or one single thing more than Holt received.

Now, I want to tell you, in conclusion, this: This Judge makes mistakes. All Judges make mistakes. We are not saying that he does not. We are telling you that the mistakes that have been made are honest mistakes of the heart and that the legal matters should be corrected in the Court and through the Appellate Court. If he has a bad personality, let the people who elected him put him out of office, and don't you take the responsibility for the matters which are not an impeachable offense.

Now, I want to tell you, too, you could take any Circuit Judge in the State of Florida and make these charges against him, and I don't care who it is, because a Judge has a tough job. Matters are in dispute when they come into his Court. They are bound to be in dispute. Otherwise, they wouldn't be in Court. And a Judge has a real difficult job of being fair and impartial.

There has been nothing—there has been no - - -

Excuse me. How much time do I have?

CHIEF JUSTICE DREW: One minute.

MR. NICHOLS: There has been nothing but impartiality shown towards anybody, one way or the other, and this Judge calls them as he sees them right down the middle of the road; and I want to tell you this.

Being a Judge is not a personality contest, and I don't believe that you are going to try this Judge on the mannerisms of whether or not he smiles or his cordiality or his personality. It is not going to be a popularity contest, and if we have to go forward with this case, which we should not have to do, that's all we will be doing. Because I will guarantee you that the witnesses from here on are going to be favorable to Judge Kelly. I am not going to put on anybody that is unfavorable, and we are going to be sitting here a long time finishing up a popularity contest.

I thank you very much.

CHIEF JUSTICE DREW: Does the Senate desire to go into closed session?

SENATOR CROSS: Pursuant to the motion of the Senator from the 38th, we are to go in, Your Honor.

CHIEF JUSTICE DREW: I might say that - - -

SENATOR CROSS: That the time of adjournment be extended until the final disposition of the motion and deliberation in closed session.

SENATOR PRICE: Mr. Chief Justice, I have a motion which I would like to offer. I would like the Chief Justice to read it, and I would like a moment to explain the motion.

CHIEF JUSTICE DREW: A motion by Senator Price. Before I read the motion, of course the Senate understands that under the rules no motion is subject to debate except in closed sessions.

Senator Price from the 36th moves that the motion of counsel for the Respondent to dismiss the Articles of Impeachment filed against the Respondent be granted and that the Respondent be discharged from arrest and that the Presiding Officer enter a proper judgment of acquittal.

Senator Price, you may explain the motion, but it may not be debated.

SENATOR PRICE: Thank you, sir. Chief Justice - - -

SENATOR BARRON: A parliamentary inquiry. Is this a substitute motion for the motion before the Court?

SENATOR PRICE: Chief Justice, my understanding, the reason that I offered the motion, the motion to dismiss was made by counsel for the Respondent. It is my understanding that a member of this Court can make any motion which would carry out the effect of the motion of counsel for the Respondent or the Managers.

CHIEF JUSTICE DREW: That is correct.

SENATOR PRICE: Chief Justice, I made the motion to get this matter before the Court and with the understanding, my explanation, that if any member of this Court desired to, and if this motion was successfully passed, he could put in the record his reasons for so voting.

CHIEF JUSTICE DREW: There is a motion before the Senate.

SEVERAL SENATORS: Call the roll, call the roll.

CHIEF JUSTICE DREW: Mr. Secretary, call the roll.

Now, gentlemen, I again read the motion. The motion is that the motion of counsel for the Respondent to dismiss the Articles of Impeachment filed against Respondent be granted, and that the Respondent be discharged from ar-

rest, and that the Presiding Officer enter a proper judgment of acquittal.

If you vote yea on the motion, a judgment of acquittal will be entered if a majority vote. If a majority vote nay, the motion will not prevail.

Call the roll.

SENATOR ASKEW: Mr. Chief Justice, I would like to ask a question before you call the roll, if you please.

CHIEF JUSTICE DREW: Yes.

SENATOR ASKEW: In the event that the vote of this Court is in the affirmative on this motion, does that preclude another motion from this Court?

CHIEF JUSTICE DREW: So far as the question of dismissing these charges are concerned, it does preclude another motion, for it terminates the proceedings so far as the question of discharging the defense Respondent is concerned, but it would not prevent this court from remaining in session for any other lawful purpose.

SENATOR ASKEW: Thank you.

CHIEF JUSTICE DREW: Call the roll, Mr. Secretary.

Whereupon the Secretary of the Senate called the roll and the vote was:

Yeas—23.

Askew	Cross	Johnson (19th)	Roberts
Barber	Davis	Kelly	Spottswood
Barron	Edwards	Mapoles	Stratton
Blank	Henderson	Parrish	Williams (27th)
Bronson	Herrell	Pope	Young
Covington	Hollahan	Price	

Nays—20.

Boyd	Connor	Johns	Pearce
Campbell	Friday	Johnson (6th)	Ryan
Carraway	Galloway	McCarty	Usher
Clarke	Gautier	Mathews	Whitaker
Cleveland	Gibson	Melton	Williams (4th)

CHIEF JUSTICE DREW: By your vote you have granted the motion to dismiss the Articles of Impeachment against Judge Richard Kelly of the Sixth Judicial Circuit and a formal order will be entered accordingly.

CHIEF JUSTICE DREW: There has been a motion regularly made and seconded that the Senators be allowed a reasonable length of time to put in any explanation of their votes that they desire.

Whereupon the following explanations of votes were filed with the Secretary of the Senate:

I have given careful thought and study to all pleadings and briefs filed in this cause, including the extensive and learned brief on all impeachment proceedings heretofore considered by the United States Senate and the Senate of this State, prepared and submitted by Justice Glenn Terrell in re Impeachment of George E. Holt, Circuit Judge. I have been in constant attendance at the trial and heard all the evidence submitted by the House Managers and heard arguments of the respective counsel for the parties. At the outset of the trial it was my judgement (and I so voted) that if the ultimate facts alleged in the Articles of Impeachment were admitted, they would not constitute an impeachable offense under the Constitution of Florida. My opinion and vote on the Motion to Dismiss and this opinion are based primarily upon the pronouncements of Justice Terrell in the above brief, to wit:

> "In this study I have examined every case of impeachment originating under the Constitution of this State, the United States, and in some of the other states. In a few instances they strongly indicate political considerations creeping into them, but in the main they are dominated by the theory that public office is a public trust, that it is a very serious matter to impeach a public officer, that in trying impeachment charges the Senate has been fully aware of its exalted duty, that it must follow the law as found in the Constitution, the common law and the precedents and from them determine the indicia of that which is impeachable. It is only after such a search that the Senate can determine whether or not the articles of impeachment state an impeachable offense, whether or not such charges are sustained by the evidence and thereby adjudicate the questions arising within its jurisdiction. In this as in all other judicial proceedings, justice and fairness are the goals to be attained. The unsavory implications of the word 'politics' have not generally controlled the result."

"The offense must be prejudicial to the public interest and it **must flow from a wilful intent or a reckless disregard to duty** to justify invocation of the remedy."

I am therefore convinced that the inescapable conclusion is that the Respondent should be acquitted under all of the Articles of Impeachment and discharged by the Court.

J. EMORY CROSS
Senator, 32nd District

This opinion is filed to express certain feelings of the writer re the action of this court in the proceedings, as opposed to an "explanation" of his vote as contemplated under the rules of this court.

I cannot, by any stretch of imagery, take issue with those who voted in the affirmative, for I know the sincerity of conviction in the vote—but, regardless of my own reservations in the matter, I strongly feel this Court of Impeachment, in an understandable haste to quit these Chambers, left undone and unconsidered certain factors which bear most heavily on the course of justice in this state, and especially in the Sixth Judicial Circuit.

> No recognition was made of the dilemma confronting those lawyers and others who have participated in this cause and who must appear before the Bar of Justice in Judge Kelly's Court to pursue their chosen profession or protect their interests and rights. This court, in rushing to a sine die adjournment, has said, in effect, to all who would pursue the impeachment provisions of our Constitution, regardless of their sincerity and aggravation—"DO SO AT YOUR OWN PERIL."

This I conceive to be somewhat inconsistent with a court whose roots and nourishment come first and primarily through legislative genesis. It is to be hoped that this matter, and the structure of the selection and tenure of judges, will receive attention in the 1965 Legislative session.

ELMER O. FRIDAY, JR.
Senator, 24th District

In my opinion, the House Managers have failed to sustain the burden of proof required under the rules and the Articles of Impeachment. That Judge Kelly has been guilty of poor judgment, of peculiar traits of personality and of poor public relations with lawyers is undisputed. But these are not lawful grounds for impeachment, in my opinion.

Much notoriety has been given to this case. I have made every possible attempt to erase these public allegations from my mind and have made my decision based on the sworn testimony in this trial which, in my opinion, has been lacking in legal sufficiency to sustain conviction.

It is apparent that Judge Kelly should be reprimanded

and admonished to live up to the canon of ethics for judges as well as to attempt to create a more harmonious relationship with the lawyers of the Sixth Judicial Circuit so that the cause of justice can be better served for the benefit of the general public.

It is my feeling that the Articles of Impeachment have not been proven by the House Managers and I do not think that Judge Kelly has been proven guilty of an impeachable offense.

ED. H. PRICE, JR.
Senator, 36th District

CHIEF JUSTICE DREW: It is hereby directed that all original court files be returned by the Secretary of the Senate to the courts in which they originated.

CHIEF JUSTICE DREW: I now have a motion from Senator Williams of the 4th: I move that the Senate hereby request the Chief Justice of the Florida Supreme Court, who under Section 2, Article V, is vested with authority to make temporary assignment of Judges, and the Chief Judge of the Sixth Judicial Circuit, provide a plan whereby the Circuit Judges in the Sixth Judicial Circuit shall rotate in presiding over the Circuit Court of Pasco County and that such plan as agreed upon shall be put into effect at the earliest possible moment.

Is there any discussion of the motion?

SENATOR YOUNG: I would like to ask a question.

CHIEF JUSTICE DREW: You may inquire.

SENATOR YOUNG: Mr. Chief Justice, on this recommendation or the motion of the Senator from the 4th, could this not be done by the Supreme Court or the Judges in the circuit without a direction from this body?

CHIEF JUSTICE DREW: It could be done, yes.

SENATOR YOUNG: Thank you.

CHIEF JUSTICE DREW: Is there any further discussion? Is there a request for a roll call?

As many as favor the motion, say "aye." Opposed, "no".

CHIEF JUSTICE DREW: The "ayes" have it. The motion is adopted.

Gentlemen, I have a resolution offered from Senator Campbell of the 39th District.

IN THE SENATE OF THE STATE OF FLORIDA
ORGANIZED AS A COURT OF IMPEACHMENT

IN RE:)
IMPEACHMENT OF CIRCUIT)
JUDGE RICHARD KELLY)

from: SENATOR CAMPBELL, 39th District

to: CHIEF JUSTICE as Presiding Officer

I move the adoption of the following resolution:

WHEREAS, this Senate sitting as a court of impeachment has previously discharged or acquitted the respondent, Judge Richard Kelly, of the articles of impeachment on the motion of the respondent at the conclusion of the testimony offered by the House Managers, and whereas, it is doubtful that this court of impeachment has any legal authority under the constitution to reprimand the respondent and whereas such reprimand would probably not be of any legal effect but whereas this court of impeachment does not desire to leave the impression by the discharge of the respondent that it condones the instances of misconduct of the respondent in conducting his court as indicated by the evidence offered by the House Managers,

BE IT RESOLVED by this Senate sitting as a court of impeachment, that this court hereby condemns the conduct of the respondent in the handling of various judicial matters before him as indicated by the evidence offered by the House Managers, in failing to comply strictly with the Code of Ethics governing Judges, in the following particulars:

(1) By becoming an active promoter of the interest of one political party against another in violation of Section 28 of the Code of Ethics governing Judges.

(2) By unduly interfering or participating in the examination of witnesses and by displaying a severe attitude on his part toward witnesses in matters before him, especially those who were excited or terrified by the unusual circumstances of a trial, in violation of Section 15 of the Code of Ethics governing Judges.

(3) By failing to conduct himself in a temperate, attentive, patient and impartial manner while conducting his court, in violation of Section 5 of the Code of Ethics governing Judges.

BE IT FURTHER RESOLVED that this court of impeachment recommends that all members of the Bar of the Sixth Judicial Circuit of Florida comply with Section 1 of the Code of Ethics governing attorneys, which requires the members of the bar to maintain a respectful attitude toward the Circuit Court not for the sake of the temporary incumbent of the judicial office but for the maintenance of its supreme importance.

BE IT FURTHER RESOLVED that in the interest of providing the people of Pasco County with an impartial court or forum in which to settle their disputes or differences this Senate, sitting as a court of impeachment, recommends that the respondent and the Bar of the Sixth Judicial Circuit comply strictly with the Code of Ethics governing Judges and Attorneys, and that both make a diligent effort to cooperate with the other in the orderly administration of the Circuit Court of the Sixth Judicial Circuit in all matters pending before the respondent, and this court further recommends that the presiding Circuit Judge of the Sixth Judicial Circuit initiate some system of rotating one or more of the Circuit Judges from Pinellas County to Pasco County on a regular basis so that members of the bar who testified in the impeachment proceedings against the respondent will not be required to litigate their cases before the respondent.

BE IT FURTHER RESOLVED that copies of this resolution be furnished to all members of the bar of the Sixth Judicial Circuit of Florida and to all Circuit Judges of the Sixth Judicial Circuit of Florida.

This resolution adopted this —— day of September, 1963 by the Florida Senate sitting as a court of impeachment.

Presiding Officer

ATTEST:

Secretary of Senate

Gentlemen, what is your pleasure?

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE DREW: Just a minute. I have - - -

SENATOR FRIDAY: Mr. Chief Justice, I believe my - - - the one you have - - - the other case, we'll withhold, just for a moment; it would follow this.

CHIEF JUSTICE DREW: Very well.

SENATOR DAVIS: A point of order, Mr. Chief Justice.

CHIEF JUSTICE DREW: State your point, Senator.

SENATOR DAVIS: I think it was the motion by the Senator from the 38th that this proceeding went until we took final action on a motion that was made.

At the present time, I believe we are adjourned, officially.

CHIEF JUSTICE DREW: I thought the motion was until the business of the Court be concluded after the motion.

SENATOR DAVIS: No sir, on this motion - - -

SENATOR CROSS: I think the motion read, Mr. Chief Justice, "Until the deliberation on the motion to dismiss is concluded."

CHIEF JUSTICE DREW: The point - - - I will rule - - - what was the motion, Senator?

SENATOR MATHEWS: A point of order Mr. Chief Justice.

CHIEF JUSTICE DREW: State your point, Senator Mathews.

SENATOR MATHEWS: The point of order is that I think that this Court is without jurisdiction to sit here and reprimand a man, based on hearing one side.

SENATOR PARRISH: Mr. Chief Justice, a point of order. The motion - - -

CHIEF JUSTICE DREW: Gentlemen, if you make the motion, it will be required for the court to go into closed session.

SENATOR DAVIS: Mr. Chief Justice, I think, on a point of order, as pointed out by the Senator of the 32nd - - -

CHIEF JUSTICE DREW: I rule that the point of order is well taken, and that we have concluded our deliberations in the absence of a motion to continue into session.

SENATOR FRIDAY: I move that we adjourn until 9:30 tomorrow morning.

SENATOR CROSS: Mr. Chief Justice, I would like to offer a substitute motion.

CHIEF JUSTICE DREW: Is it - - - I don't like - - -

SENATOR CROSS: I would like to move that this Senate, sitting as a Court of Impeachment, adjourn, sine die.

CHIEF JUSTICE DREW: There's a motion that this Senate, sitting as a Court of Impeachment, adjourn, sine die, which take precedence over other motions.

As many as favor the motion, say "aye." Opposed "no."

CHIEF JUSTICE DREW: The "ayes" have it; the motion is adopted.

The following Order was entered:

IN THE SENATE OF THE STATE OF FLORIDA
ORGANIZED AS A COURT OF IMPEACHMENT

IN RE :
IMPEACHMENT OF CIRCUIT :
JUDGE RICHARD KELLY :
:

FINAL JUDGMENT OF THE COURT
OF IMPEACHMENT

The Managers for the House having announced in open Court that they had concluded the presentation of the evidence of the state in support of the Articles of Impeachment and the attorneys for the Respondent having thereafter filed in and with the Court a Motion to Dismiss the Articles of Impeachment on the grounds and for the reasons appearing in said motion made a part of the proceedings of this Court and the Court having heard argument of counsel for the respective parties, Senator Price of the Thirty-sixth District moved that "the motion of counsel for the Respondent to dismiss the Articles of Impeachment filed against the Respondent be granted and that the Respondent be discharged from arrest and that the Presiding Officer enter a proper judgment of acquittal."

On call of the roll of the Senate there were forty-three members present. The motion aforesaid was then granted by a vote of twenty-three yeas and twenty nays.

Pursuant to the motion "that the Presiding Officer enter a proper judgment of acquittal", it is

ORDERED AND ADJUDGED, that the Motion to Dismiss be and it is granted and the said Richard Kelly be and is hereby acquitted of the charges of said Articles made in said Court.

Pursuant to Rule 22 of the Rules of Procedure and Practice in the Senate When Sitting on the Trial of Impeachments duly adopted in this proceedings a copy of this Judgment shall be made a part of this record and a certified copy thereof shall be forthwith deposited in the Office of the Secretary of State of Florida.

DONE AND ORDERED in open Court this 24th day of September, 1963.

E. HARRIS DREW
Chief Justice
Supreme Court of Florida
as Presiding Officer of the
Court of Impeachment

Attest:

Edwin G. Fraser
Secretary of the Senate

Whereupon, at 5:50 o'clock P.M., Tuesday, September 24, 1963, the trial of the Honorable Richard Kelly, Circuit Judge of the Sixth Judicial Circuit by the Senate of the State of Florida was concluded, and the Senate, sitting as a Court of Impeachment, stood adjourned, sine die.

CERTIFICATE

THIS IS TO CERTIFY that, as Secretary of the Senate of the State of Florida, during the proceedings of the Senate, sitting as a Court of Impeachment, for the trial of Honorable Richard Kelly, Circuit Judge of the Sixth Judicial Circuit of Florida, I have faithfully and impartially performed the duties assigned me.

I FURTHER CERTIFY that the foregoing pages numbered from 7 to 403, both inclusive, are and constitute a complete, true and correct record of the proceedings of the Senate of the State of Florida, sitting as a Court of Impeachment, June 14, 1963 to September 24, 1963, both dates inclusive.

In completing my work for the Senate, sitting as a Court of Impeachment, I desire to extend to the Members, Officers and Attaches of the Senate, Managers on the part of the House of Representatives and to Counsel, my sincere thanks for the many courtesies extended, and the splendid cooperation given me.

EDWIN G. FRASER
Secretary of the Senate

Tallahassee, Florida
September 24, 1963

APPENDIX

The following Foreword is a reproduction of the language contained in the deskbook prepared by Honorable E. Harris Drew, Chief Justice of the Supreme Court of Florida, for the use of each Senator during the impeachment proceedings. The deskbook is filed and made a part of the permanent records of these impeachment proceedings but is not reproduced in full in this transcript:

FOREWORD

To the Members of the Florida Senate,
Sitting as a Court of Impeachment,
The Capitol,
Tallahassee, Florida.

Gentlemen:

This deskbook has been prepared for your information and use in the impeachment trial of Honorable Richard Kelly, scheduled to commence at 11:00 o'clock A.M. on September 9, 1963. It contains copies of all pertinent pleadings except respondent's answer which is required to be filed at or before the commencement of the trial. In view of the pending motions of respondent directed to the sufficiency of the articles of impeachment, it is probable that this answer of respondent will not be filed until the Senate rules on these pending motions. In the event the Senate denies these motions, and the answer is filed, a copy will be furnished each member of the Senate for inclusion at an appropriate place in this deskbook.

We are indebted to former Chief Justice Glenn Terrell for his exhaustive study and compilation of precedents in impeachment proceedings which appear in the Senate Journal covering a previous impeachment trial. The brief prepared by Judge Terrell is incorporated herein without alteration for your use and guidance in these proceedings.

The Senate Rules governing this trial, adopted June 14, 1963, are included in this deskbook. The rules have been indexed for ready reference. Answers to many questions which may occur to you may be found in these rules, and, it is suggested that you might find it desirable to familiarize yourselves fully with these rules early in the proceedings.

In addition to the printed portions of this deskbook, there is blank paper for such notes and memoranda as you may wish to make as the trial progresses.

I cannot emphasize too strongly that you, as Senators, are vested under our Constitution and the precedents of the Courts with almost absolute power in these proceedings—You constitute a court of exclusive, original and final jurisdiction. You are both Judge and Jury; yours is the final and absolute word. This great power carries with it, of course, correspondingly great responsibilities. The very keystone of our republic is a fair and impartial trial —by impartial arbiters—in every instance in which a citizen is charged with a serious offense. The symbol which depicts our notion of justice is blindfolded in token of her impartiality, weighing with one hand the merits of the cause, the other hand holding the sword—the avenger of wrong.

Our Constitution provides that the Chief Justice "shall preside at all trials by impeachment." I am not empowered to vote upon, or suggest any course of action upon the merits of the cause. It is my responsibility to conduct these proceedings in such a manner as to assure an orderly presentation to this Court of the material and competent evidence of the parties, and to consult with and advise you as to the law applicable to these proceedings.

My decisions as presiding officer—under the rules—stand as judgments of the Court unless overruled by a majority vote. See Rule 7. Also see Rule 18 which requires all questions, motions or orders made or requested by a Senator to be in writing.

Respectfully,
E. HARRIS DREW
Chief Justice, Supreme Court
of Florida

BY THE SELECT IMPEACHMENT INVESTIGATING COMMITTEE APPOINTED UNDER H. R. NO. 1442 — H. R. NO. 2504—A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF FLORIDA PREFERRING ARTICLES OF IMPEACHMENT AGAINST RICHARD KELLY AS A DULY COMMISSIONED AND ACTING JUDGE OF THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF FLORIDA; PROVIDING FOR THE PRESENTATION OF ARTICLES OF IMPEACHMENT TO THE SENATE OF THE STATE OF FLORIDA REQUESTING THE TRIAL THEREOF; APPOINTING AND PROVIDING FOR THE COMPENSATION OF A COMMITTEE OF THE HOUSE TO MANAGE, PRESENT AND PROSECUTE ARTICLES OF IMPEACHMENT AT TRIAL BEFORE THE SENATE; AND PROVIDING FOR THE EMPLOYMENT AND COMPENSATION OF LEGAL AND CLERICAL HELP AND EXPENSES OF TRIAL.

WHEREAS, a committee of this body was, by House Resolution No. 1442 of the 1963 legislative session, appointed to investigate charges of official misconduct of Circuit Judge Richard Kelly of the Sixth Judicial Circuit of Florida and make its report and recommendations to the house of representatives, and

WHEREAS, said committee has performed its duties and filed its report recommending that said judge be impeached, NOW, THEREFORE:

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF FLORIDA:

Section 1. That Richard Kelly, a duly commissioned and acting judge of the circuit court of the Sixth Judicial Circuit of Florida, has been guilty of misdemeanor in his office as Circuit Judge aforesaid for which he, the said Richard Kelly as circuit judge, should be and is hereby impeached of his said office under Article III, Section 29, of the Constitution of the State of Florida; the said acts so constituting misdemeanor in office of him, the said Richard Kelly, as judge aforesaid, being hereinafter more particularly set forth by way of separate articles of impeachment which are hereby found and voted against the said Richard Kelly as Circuit Judge aforesaid by a vote of two-thirds (2/3) of all members present of the house of representatives of the state of Florida, viz:

ARTICLES OF IMPEACHMENT

Articles of impeachment of the house of representatives of the state of Florida, in the name of themselves, and all of the people of the state of Florida against Richard Kelly who was heretofore elected, duly qualified and commissioned to serve as a Circuit Judge of the Sixth Judicial Circuit of Florida.

ARTICLE I

That said Richard Kelly, while holding the office of Circuit Judge for the Sixth Judicial Circuit of Florida, having been duly elected, qualified and commissioned as such judge and while acting as such judge was guilty of misdemeanor in office in the manner and form as follows, to-wit:

The reasonable and probable consequences of the actions and conduct of Richard Kelly hereunder specified and indicated in this article since he became judge of said court, as an individual, or as said judge, or both, has been such as to bring his court into scandal and disrepute,

to the prejudice of said court and public confidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the state judiciary and to render him unfit to continue to serve as such judge, did:

(a) Intentionally, illegally and for personal reasons and emotions, abuse the power and trust vested in him as said Circuit Judge in a tyrannical and oppressive manner and did violate the Code of Ethics governing conduct of judges in and of the state of Florida, in that he, the said Richard Kelly, on or about March 26, 1963, in the case of State Road Department of Florida and Pasco County, v. Aiken, Law Case No. 1753, in the Circuit Court, Sixth Judicial Circuit of Florida, in and for Pasco County, Florida, based on affidavits filed by attorneys Charlie Luckie, Jr., E. B. Larkin and Robert E. Clawson, in support of a suggestion of disqualification of said judge on the ground of bias and prejudice filed pursuant to section 38.10, Florida Statutes, 1961, by Charlie Luckie, Jr., as an attorney representing clients in said cause, with knowledge and advice that said affidavits and suggestion were privileged, were not the subject of contempt and were not contemptuous in nature under Florida law, did issue rules to show cause to said attorneys requiring them to appear on a day certain to show cause why they should not be found in criminal contempt of that court, and that he did thereafter, prior to the time specified for hearing on said rule to show cause, dictate and prepare an opinion whereby said attorneys were found in contempt though no order based on this opinion was ever entered because of the intervention and prohibition of the district court of appeal of the second district of the State of Florida.

(b) On the 15th day of March, 1963, issue an order bearing the caption of said court, but bearing no style of any cause or proceeding pending in that court and not relating thereto, but for the prime purpose of requiring attendance at a discussion of a political question of moment in the community, ordering and requiring Charlie Luckie, Jr., an attorney and solicitor of that court, to appear before him at a time stated in said order and did cause the same to be served upon the said Charlie Luckie, Jr., by the sheriff of Pasco County, although said judge knew, or should have known in all reasonable competence, that such was and is an abuse of his public trust and exceeds the power of his office.

(c) On or about the 16th day of March, 1962, intentionally, illegally and for personal reasons and emotions, abuse the power and trust vested in him as said Circuit Judge in a tyrannical and oppressive manner and did violate the Code of Ethics governing conduct of judges in and of the State of Florida, by causing the Honorable Stanley C. Burnside, Clerk of the Circuit Court, Sixth Judicial Circuit of Florida in and for Pasco County, to come to the courtroom in the Pasco County Courthouse. That upon arrival at said courtroom said Stanley C. Burnside, being without previous knowledge of what was to take place, was taken into open court in which the said Richard Kelly, acting as Circuit Judge, subjected the said Stanley C. Burnside to an extended session of oppressive and threatening statements and questions, to his extreme harassment, discomfort and embarrassment.

Wherefore, the said Richard Kelly was and is guilty of misbehavior and misdemeanor in office.

ARTICLE II

The said Richard Kelly, while holding the office of Circuit Judge for the Sixth Judicial Circuit of Florida, having been duly elected, qualified and commissioned as such judge and while acting as such judge was guilty of misdemeanor in office in the manner and form as follows, to-wit:

The reasonable and probable consequences of the actions and conduct of Richard Kelly hereunder specified and indicated in this article since he became judge of said court, as an individual, or as said judge, or both, has been such as to bring his court into scandal and disrepute, to the prejudice of said court and public confidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the state judiciary and to render him unfit to continue to serve as such judge, did:

(a) On the 26th day of February, 1963, at Zephyrhills, Florida, in person, use the name, standing and dignity of his high office in a speech before a partisan political group to assail and disparage the reputation of attorneys, elected and appointed public officials and legislative representatives of Pasco County. That aforesaid speech and public appearance was for a political purpose and was and is highly censurable and unbecoming of a circuit judge of the State of Florida, and by this conduct the said Richard Kelly violated the Code of Ethics governing the conduct of judges in Florida.

(b) Assist in the preparation and circulation of a petition relating to a political purpose in which nineteen (19) practicing attorneys of the Pasco County Bar Association were assailed as being undemocratic and un-American, thereby improperly lending the name, standing, dignity and pursuasive capacity of his high office to such political purpose and unwarranted, slanderous assertions.

Wherefore, that said Judge Richard Kelly was and is guilty of misbehavior and misdemeanor in said office.

ARTICLE III

That said Richard Kelly, while holding the office of Circuit Judge for the Sixth Judicial Circuit of Florida, having been duly elected, qualified and commissioned as such judge and while acting as such judge was guilty of misdemeanor in office in the manner and form as follows, to-wit:

The reasonable and probable consequences of the actions and conduct of Richard Kelly hereunder specified and indicated in this article since he became judge of said court, as an individual, or as said judge, or both, has been such as to bring his court into scandal and disrepute, to the prejudice of public respect for and confidence in the state judiciary and to render him unfit to continue to serve as such judge, did:

On or about the 6th day of April, 1962, and thereafter on the 20th day of April, 1962, in the case of Mountain v. Pinellas County in the Circuit Court of Pinellas County, Chancery No. 61540, recklessly and arbitrarily exercise the powers of said office by entering and issuing orders lifting and reinstating a temporary injunction prepared by counsel benefited by such orders, without notice or communication to counsel for the parties adversely affected, thereby embarrassing counsel for said parties and seriously abriding the rights and remedies of the parties thereto.

Wherefore, that said Judge Richard Kelly was and is guilty of misbehavior and misdemeanor in said office.

ARTICLE IV

That said Richard Kelly, while holding the office of Circuit Judge for the Sixth Judicial Circuit of Florida, having been duly elected, qualified and commissioned as such judge and while acting as such judge was guilty of misdemeanor in office in the manner and form as follow, to-wit:

The reasonable and probable consequences of the actions and conduct of Richard Kelly hereunder specified and indicated in this article since he became judge of said

court, as an individual, or as said judge, or both, has been such as to bring his court into scandal and disrepute, to the prejudice of said court and public confidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the state judiciary and to render him unfit to continue to serve as such judge, did:

Cause friction between himself and the other circuit judges of the Sixth Judicial Circuit of Florida, by disputing with them the assignment of cases generally in the circuit and the assignment of other judges of the circuit to preside over any cases in Pasco County, although the assignment of cases to particular circuit judges is the function and duty of the presiding judge of the circuit and not the said Richard Kelly.

Wherefore, the said Judge Richard Kelly was and is guilty of misbehavior and misdemeanor in said office.

ARTICLE V

The said Richard Kelly, while holding the office of Circuit Judge for the Sixth Judicial Circuit of Florida, having been duly elected, qualified and commissioned as such judge and while acting as such judge was guilty of misdemeanor in office in the manner and form as follows, to-wit:

The reasonable and probable consequences of the actions and conduct of Richard Kelly hereunder specified and indicated in this article since he became judge of said court, as an individual, or as said judge, or both, has been such as to bring his court into scandal and disrepute, to the prejudice of said court and public confidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the state judiciary and to render him unfit to continue to serve as such judge, did:

(a) Allow, aid or condone the alteration of public records in a cause pending before him in the case of Hayward v. Hayward in the Circuit Court of the Sixth Judicial Circuit of Florida in and for Pasco County, Florida, Chancery No. 8556, on certain pleadings filed therein, despite the official record to the contrary, and his own previous finding of fact, by holding that signatures appearing on a pleading at a later hearing had been on the pleadings at the previous hearing covered by the record, which alteration was and is a violation of the criminal law of the state of Florida.

(b) In the case of Case v. Case, Chancery No. 63737 in the Circuit Court of Pinellas County, Florida, unlawfully and unjustly hold one Alex D. Finch, a practicing attorney of Pinellas County, in contempt of court and fined him the sum of two hundred dollars ($200.00) and did, on the next day or the following day thereafter, rescind the order of contempt and imposition of the fine and request of the said Alex D. Finch that he, Judge Kelly, be permitted to destroy the record of the case insofar as it pertained to the contempt matter.

Wherefore, the said Judge Richard Kelly was and is guilty of misbehavior and misdemeanor in said office.

ARTICLE VI

That said Richard Kelly, while holding the office of Circuit Judge for the Sixth Judicial Circuit of Florida, having been duly elected, qualified and commissioned as such judge and while acting as such judge was guilty of misdemeanor in office in the manner and form as follows, to-wit:

The reasonable and probable consequences of the actions and conduct of Richard Kelly hereunder specified and indicated in this article since he became judge of said court, as an individual, or as said judge, or both, has been such as to bring his court into scandal and disrepute, to the prejudice of said court and public confidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the state judiciary and to render him unfit to continue to serve as such judge, did:

In the case of State v. Sinclair in the Circuit Court of Pinellas County, Florida, in which the said Sinclair previously had been indicted by the grand jury of Pinellas County for the crime of murder in the first degree, grant a writ of habeas corpus upon petition of the defendant, Sinclair, without notifying the prosecuting attorney of the Sixth Judicial Circuit of Florida as required by section 27.06, Florida Statutes, 1961.

Wherefore, the said Judge Richard Kelly was and is guilty of misbehavior and misdemeanor in said office.

ARTICLE VII

That said Richard Kelly, while holding the office of Circuit Judge for the Sixth Judicial Circuit of Florida, having been duly elected, qualified and commissioned as such judge and while acting as such judge was guilty of misdemeanor in office in the manner and form as follows, to-wit:

The reasonable and probable consequences of the actions and conduct of Richard Kelly hereunder specified and indicated in this article since he became judge of said court, as an individual, or as said judge, or both, has been such as to bring his court into scandal and disrepute, to the prejudice of said court and public confidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the state judiciary and to render him unfit to continue to serve as such judge, did:

(a) Unduly and unnecessarily interject his own personality into the trial of cases before him, indulge in unnecessary, embarrassing and belligerent examination of witnesses and parties; engage in undue and unnecessary arguments with counsel for parties appearing before him, in the presence of their clients and the public generally, and otherwise has failed to adequately inform and prepare himself on the law and procedure of causes and proceedings before him, all of which impeded the expeditious disposition of litigation before him adding greatly to the expense of litigation in his court, all of which was and is in violation of the Code of Ethics governing the conduct of judges in Florida.

(b) Indulge in partisan politics.

(c) On many and diverse occasions discuss litigation pending before him with parties themselves out of the presence of their attorneys of record.

(d) Conduct and mis-manage his office as circuit judge so as to cause confusion by wilfully and deliberately alienating the attorneys practicing before him in Pasco County, Florida.

(e) Flagrantly violate certain provisions of the Code of Ethics governing judges as adopted by the supreme court of Florida.

(f) Commit other and further actions of misconduct and misdemeanors in office.

Wherefore, the said Judge Richard Kelly was and is guilty of misbehavior and misdemeanor in said office.

ARTICLE VIII

The said Richard Kelly, while holding the office of Circuit Judge for the Sixth Judicial Circuit of Florida, having been duly elected, qualified and commissioned as

such judge and while acting as such judge was guilty of misdemeanor in office in the manner and form as follows, to-wit:

The reasonable and probable consequences of the actions and conduct of Richard Kelly hereunder specified and indicated in this article since he became judge of said court, as an individual, or as said judge, or both, has been such as to bring his court into scandal and disrepute, to the prejudice of said court and public confidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the state judiciary and to render him unfit to continue to serve as such judge, did:

In his official capacity, intentionally, shrewdly, and ruthlessly and in abuse of his official trust, as evidenced by the acts heretofore set out in Articles I through VII hereof, each of which is hereby realleged and reaffirmed and made a part of this article as though set out in full herein, embark upon and maintain a continuous course of conduct calculated to intimidate and embarrass the members of the Pasco County Bar Association, the officials of Pasco County, the officials of certain cities therein, and certain other attorneys, in the presence of their constituents, clients and before the public generally.

Wherefore, the said Judge Richard Kelly was and is guilty of misbehavior and misdemeanor in said office.

Section 2. That Richard Kelly, a judge of the Circuit Court of the Sixth Judicial Circuit of Florida, be impeached of his office for misdemeanors in his office.

Section 3. That the Speaker of the House of Representatives shall appoint and fix the compensation of two (2) members of the House of Representatives as a board of managers, said compensation to be paid out of the general legislative appropriation.

Section 4. That the said board of managers be and they are hereby instructed to appear before the Senate of the State of Florida and at the bar thereof in the name of the House of Representatives of the State of Florida, and all of the people of the State of Florida, to impeach the said Richard Kelly for misconduct in office and to exhibit to the said Senate the foregoing articles of impeachment against said judge, which have been agreed upon by this House, and that the said managers request that the senate issue an order for the appearance of said Richard Kelly before the said Senate to answer said articles of impeachment, and demand his impeachment, conviction and removal from office.

Section 5. That the said board of managers shall manage, present and prosecute the foregoing articles of impeachment at the trial thereof by the Senate.

Section 6. That the board of managers on the part of the House of Representatives of Florida be and it is hereby authorized and empowered to employ and fix the compensation of such legal, clerical and other necessary assistance as they may require, and to incur such expenses as may be necessary in the preparation and conduct of the case, to be paid out of the legislative expenses on vouchers approved by the board of managers.

Section 7. That said board of managers be and it is hereby authorized to issue subpoenas and subpoenas duces tecum requiring appearance of witnesses at said impeachment trial which witnesses shall receive the compensation provided by law.

BILL OF PARTICULARS

The Managers of the House of Representatives appointed by the Speaker of the House under and by virtue of the authority of House Resolution 2504, by and through their undersigned attorney, herewith submit this, their Bill of Particulars to House Resolution 2504, same being a Resolution for the impeachment of Richard Kelly, Circuit Judge in and for the Sixth Judicial Circuit of Florida, as follows:

ARTICLE I.

Particulars as to Article I;— None

ARTICLE II.

Particulars as to Article II, (a): The speech referred to in this paragraph of this Article was delivered before the Zephyrhills Women's Republican Club.

Particulars as to Article II, (b): That the assistance in the preparation and circulation of the Petition referred to in this article occurred during the period from February 26, 1963 to March 15, 1963, was performed in conjunction with one Otto Carlson, who is a leader in the Republican Executive Committee of Pasco County, that said activity on behalf of said Circuit Judge Richard Kelly consisted of the lending of his official office for the placement and use of a duplicating machine upon which copies of the Petition relating to the proposed change of Pasco County from the Sixth to the Fifth Judicial Circuit were made, and that he further, with the said Otto Carlson, actively solicited signatures to said Petition.

ARTICLE III.

Particulars as to Article III: None.

ARTICLE IV.

Particulars as to Article IV: "Cause friction between himself and the other circuit judges of the Sixth Judicial Circuit of Florida, . . .":

1. That said Judge Richard Kelly, shortly after taking office in January, 1960, did actively contest the assignment of criminal cases in Pinellas County of the Sixth Judicial Circuit with presiding Judge John U. Bird and the other circuit judges of the Sixth Judicial Circuit, as more particularly appears in the testimony of Judge John U. Bird before the Committee of the House of Representatives of the State of Florida on May 13, 1963, in volume 2, pages 8 through 10, copies of which testimony have been furnished to Judge Kelly, the same being the exact transcript of the hearing of the House Committee, at which hearing said Circuit Judge Richard Kelly was present personally, was represented by counsel and was afforded full right of cross-examination.

2. That Circuit Judge T. Frank Hobson, Jr., on or about January 16, 1961, presided over a hearing in Pasco County in the case of Hamilton v. Taylor, et al., in the Circuit Court for the Sixth Judicial Circuit of Florida, Chancery No. 7898, upon the conclusion of which hearing the said Circuit Judge Richard Kelly initiated an argument with said Judge Hobson, as more particularly appears in Volume 2, of the testimony hereinbefore referred to, at pages 26 through 41 thereof.

ARTICLE V.

Particulars as to Article V, (a): "Allow, aid or condone, the alteration of public records in a case pending before him", that the "certain pleadings filed therein" referred to, is more particularly Motions to Vacate a Decree Pro Confesso and that the "signatures" referred to are on these pleadings and in the jurat therein.

Particulars as to Article V, (b): None.

ARTICLE VI.

Particulars as to Article VI: That the matters relative

to the case of State v. Sinclair, referred to in this Article, is the application for said Writ of Habeas Corpus being entered by said Circuit Judge Richard Kelly on the 1st day of November, 1962, said case being styled Maurice Sinclair v. Don Genung, Habeas Corpus Proceeding, Pinellas County, Law No. 16,180.

ARTICLE VII.

Particulars as to Article VII, (a): That:

1. Said Richard Kelly, in the case of Brooks and Sirmons v. Bryant, Law No. 1575, in the presence of the jury, parties and their attorneys and witnesses, berated the police officer testifying therein.

2. That in the proceeding of the Petition of the City of New Port Richey, Florida, in the Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pasco County, on the 5th Day of February, 1963, Chancery Case No. 8622, did berate a witness for Petitioner, one P. F. Cheney, in the giving of his testimony and did further, berate and embarrass one James J. Altman, the attorney for the Petitioner and did inject himself into the cause unnecessarily so that the trial of the cause was extended beyond normal limits. That, further, in said case, the said Circuit Judge Richard Kelly did fail to properly inform himself on the law of the case to wit: Bond Validation.

4. That in the case of State v. Grady, in the Sixth Judicial Circuit of Florida, in and for Pasco County, Criminal Case No. 928, the said Circuit Judge Richard Kelly did engage himself unnecessarily in the trial of the cause, making many unnecessary observations and statements so that the trial of the cause was unduly extended.

5. That in the case of James, et al., v. Anderson, et al, in the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, Florida, No. 64,445, said Circuit Judge Richard Kelly did harrass, embarrass and berate Howard P. Rives, attorney to one of the parties to said cause.

6. That in the case of Schink v. Stell, in the Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pasco County, Florida, Chancery No. 8204, said Circuit Judge Richard Kelly did fail to properly prepare himself on the law of annulment thereby unduly and unnecessarily extending the length of the trial in that cause.

7. That said Circuit Judge Richard Kelly, in an unnamed proceeding on the 15th day of March, 1963 did order an attorney, one Charlie Luckie, Jr., a practicing attorney from Dade City, Florida, to appear before him and caused this order to be served upon the said Charlie Luckie, Jr., without properly preparing himself or researching the law on the question.

8. In the case of Chaney v. Chaney, said Circuit Judge Richard Kelly did, at a temporary hearing therein, harrass and embarrass one Frank M. Wolfe, an attorney of record for one of the parties to that cause.

9. That on many other diverse occasions, all of which are contained within the pages of the testimony hereinabove referred to and the exhibits which form a part thereof, has performed similarly in other cases with other persons. Said Richard Kelly, as stated above, having been furnished all such testimony and taken in the circumstances hereinbefore related and upon which evidence the Board of Managers relies.

10. In the case of Kondenar v. Kondenar, in the Sixth Judicial Circuit, in and for Pinellas County, Florida, Chancery No. 61,134, said Circuit Judge Richard Kelly harrassed and embarrassed an assistant court reporter, one Doris Lane, threatening her with contempt of court. Shortly thereafter, one George A. Routh, the attorney for the Plaintiff closed a door to the Chamber so that evidence then being introduced would be more audible, whereupon said Circuit Judge Richard Kelly threatened the said George A. Routh with contempt of court and began to harrass and embarrass him throughout the hearing, referring to Mr. Roth as a "dunce."

11. In the case of Charles A. Brady v. John H. Horenburg and Mallory Horenburg, said Circuit Judge Richard Kelly cast aspersions upon the professional abilities of the attorneys for both parties to wit: Joseph J. Davies and James F. Snelling, stating that neither were qualified to handle a case of that magnitude and that neither were "dry behind the ears."

Particulars as to Article VII, (b): "Indulge in partisan politics".

1. That said Circuit Judge Richard Kelly, on or about the 27th day of February, 1962, did make a political contribution to the Republican Executive Committee of Pasco County in the amount of five hundred dollars ($500.00), said contribution being made by check drawn on the Bank of Zephyrhills, Florida on the account of said Circuit Judge Richard Kelly, payable to the Republican Executive Committee of Pasco County and endorsed in the name of said payee, by one Otto Carlson.

2. That said Circuit Judge Richard Kelly, since his taking office, has acknowledged and reaffirmed the statements and publications made by him during his candidacy and as appear in the testimony and exhibits taken before the House Committee as above referred to and upon all of which the Board of Managers relies.

Particulars as to Article VII, (c): "On many and diverse occasions discuss litigation pending before him with the parties themselves without presence of their attorney of record."

1. In the case of Lamb v. Lamb in the Sixth Judicial Circuit of Florida, in and for Pasco County, Florida, Chancery No. 8618, did send another person on May 3, 1963 to bring a client of one Jack T. Edmunds, a practicing attorney of that court, before him to, and did, discuss the proceeding out of the presence of her attorney of record.

2. In the case of Collura v. Collura, said Circuit Judge Richard Kelly discussed the case with one of the clients thereto, Mr. Frank J. Collura, out of the presence of A. J. Hayward, his attorney of record.

Particulars as to Article VII, (d), (e) and (f):

That on each of these the Board of Managers particularly rely upon the items specifically set out in the Articles of Impeachment heretofore filed herein, this Bill of Particulars, that testimony and those documents introduced into evidence in the hearings hereinbefore referred to, and such other pertinent information as may come before the said Board of Managers and which will be promptly be furnished to said Circuit Judge Richard Kelly as a supplement to this Bill of Particulars.

ARTICLE VIII.

Particulars as to Article VIII: None.

Respectfully submitted,

WILLIAM G. O'NEILL

C. WELBORN DANIEL

MANAGERS ON THE PART OF THE HOUSE OF REPRESENTATIVES

JAMES J. RICHARDSON, COUNSEL FOR THE BOARD OF MANAGERS

SUPPLEMENT TO BILL OF PARTICULARS

COME NOW, the Board of Managers on the part of the House of Representatives, appointed by the Speaker of the House, under and by virtue of the authority of House Resolution 2504, and herewith submit this, their Supplement to the Bill of Particulars, pursuant to the reservation contained in said Bill as appears in the Bill, as to Article VII, (d), (e) and (f), and would show the following pertinent information previously furnished to Circuit Judge Richard Kelly through Honorable Perry Nichols, his attorney:

ARTICLE VII

(f) Commit other and further actions of misconduct and misdemeanors in office.

1. That the said Richard Kelly, shortly after being elected to the office of Circuit Judge, did cause a secretary, Mrs. Bea Richardson, to bring him the schedule of Circuit Judge Richard Leavengood of the Sixth Judicial Circuit, and did tell her to reassign some of the cases to him, though such was not accomplished. That said Richard Kelly was informed by Mrs. Richardson that she was only an employee and reassignment could be accomplished only with the approval of Circuit Judge Richard Leavengood.

2. That said Richard Kelly, shortly after election, did accuse the Court Records Department of treating him unfairly and did try to create doubt in the minds of said clerks about the impartiality of Presiding Judge John U. Bird.

3. In the case of Marcelli v. Marcelli, said Circuit Judge Richard Kelly, in the presence of the parties litigant, cast aspersions upon the professional abilities of the attorneys for both parties to wit: Joseph J. Davies and James F. Snelling, stating that neither were qualified to handle a case of that magnitude and that neither were "dry behind the ears".

4. That in the case of First National Bank of Yonkers v. William Davidson, Pinellas County Case No. 62,123, Chancery, said Richard Kelly subjected one Ralph Steinberg, an attorney for the plaintiff, to unusual, unnecessary and burdensome acts, thereby harassing said Ralph Steinberg, in the presence of his clients, delaying the expeditious disposal of that case, and adding to the expense of litigation and costs to the client.

5. That in the case of Weaver v. Weaver, Pinellas County Case No. 56,713, Chancery, harassed and embarrassed one Frances M. Lovelace, an attorney representing one of the parties to that cause, in the presence of the parties to that cause, and did fail and refuse to follow the law as exhibited to him.

6. That in the case of In Re Duane Patterson, Pinellas County, Chancery Case No. 60,441, an adoption case, said Richard Kelly harassed and embarrassed, goaded and persecuted one William E. Hogan, Jr., an attorney representing a party in that cause in the presence of said parties, his clients, and did force him to perform unusual, unnecessary and burdensome acts not required by law, thus adding to the expense of litigation and costs to the client and that in addition, he did, in the same case, harass and embarrass the court reporter, one Al Reeves.

7. That in the case of Allie Williams, et ux, v. Fulton Woodman, Pinellas County Law No. 14,761, a personal injury case, said Richard Kelly, having been informed that an essential expert witness would be unavailable on the day set for trial, did refuse to grant a continuance, although all parties had agreed to the same, forcing the plaintiff to take a non suit, thereby necessitating the complete refiling of the same and adding to the expense of litigation and costs to the client. That further, one Jack Page, an attorney for one of the parties, was required in connection therewith, to furnish said Richard Kelly with a brief on the question of non suit which brief the said Richard Kelly refused to agree with, although the non suit was eventually granted by him.

8. That in the case of Mary Molly Yates, Pinellas County Chancery No. 57,864, Free Dealership Petition, and the case of Fifield v. Fifield, Pinellas County Chancery No. 60,891, the said Richard Kelly did harass and embarrass one Lloyd Phillips, an attorney representing clients in that cause and did display toward said Lloyd Phillips an obnoxious and arrogant attitude, all in the presence of his clients.

9. That in the case in which one William E. Allison, an attorney, was representing a client named Joe Putnam, said Richard Kelly presiding over said case—having taken the same on assignment from Judge Hobson—did arbitrarily refuse to recognize the power of the attorneys to settle the case and dismiss the same without his approval, although said Judge Hobson had already signed an order of dismissal.

10. In a certain case in which A. T. Cooper, Jr., was representing one party and one Page Jackson was representing the other party, both being attorneys at law, said Richard Kelly urged and prompted the said Page Jackson into objecting to the introduction of certain documents, although the attorneys had entered into a stipulation allowing their introduction.

11. That in the case of Cone v. Cone, Pasco County Chancery No. 8532, said Richard Kelly, in an ex parte divorce case, took over the questioning of the witness and did harass and embarrass one Ronald Mountain, attorney at law, attorney for one of the parties to the suit, in the presence of his client and did otherwise unnecessarily participate in the trial of the cause and did harass and and embarrass and belligerently examine witness in said cause.

12. That in a mortgage foreclosure case in which Mr. William M. Goza, Jr., was representing a mortgagee in an ex parte foreclosure, said Richard Kelly was negligent in the handling of said cause, necessitating many trips to said Judge Kelly's office by Mr. Goza during the time ex parte matters were to be heard; that when said Judge Kelly finally signed the order, he failed to complete the same, although it had been brought to his attention; he refused to allow the said William M. Goza, Jr., to deliver the file to the clerk so that when eventually the order was filed, it was incomplete; all of which added to the expense of litigation and cost to the client and delayed the expeditious disposal of the cause.

13. That in a certain vigorously contested foreclosure case in which Mr. Milton D. Jones, Jr., was representing one of the parties and his opponent suddenly agreed to a decree in Mr. Jones' favor, said Richard Kelly improperly criticized said Milton D. Jones, Jr. in the presence of his clients for being negligent in not having a decree prepared in advance.

14. That in the case of Jackson v. Luster, an ex parte mortgage foreclosure, Pinellas County Chancery No. 62,694, said Richard Kelly did cause one A. W. Jordan, Jr., an attorney representing one of the parties to that cause, to perform certain unnecessary and burdensome acts and did harass and embarrass the said A. W. Jordan, Jr., and delay the expeditious disposal of the cause.

15. That in the case of First Federal Savings and Loan Association v. Marcal, Inc., Pinellas County Chancery No. 57,358, said Richard Kelly did goad and embarrass one John Bonner in the presence of his client.

16. That in the case of Nicholas v. Nicholas, Pinellas County Chancery No. 60,112, said Richard Kelly refused to enforce the provisions of a final decree previously entered by another judge of that court unless one Richard W. Carr presented a case exactly in point.

Respectfully submitted,

WILLIAM G. O'NEILL
C. WELBORN DANIEL
Board of Managers
House of Representatives

MOTION TO STRIKE INDIVIDUAL ARTICLES OF IMPEACHMENT

The Respondent, RICHARD KELLY, Circuit Judge in and for the Sixth Judicial Circuit of Florida, by and through his undersigned counsel, respectfully moves the Senate of the State of Florida, organized as a Court of Impeachment, to strike each of the eight individual Articles of Impeachment herein, upon the following grounds:

1. No individual Article charges the Respondent with any high crime or misdemeanor in office, or with an impeachable offense.

2. No individual Article purports to charge the Respondent with an act involving moral turpitude.

3. No individual Article purports to charge the Respondent with corrupting his office for personal gain or advancement.

4. Each individual Article merely constitutes criticism of acts taken by the Respondent while lawfully operating within the scope of the power invested in him by law, such criticism being of the type that could as well be made of the conduct of any trial judge, or of any citizen.

5. Each individual Article is so vague, ambiguous, indefinite and uncertain in terms and constructed in such general loose and uninformative allegations and unsupported conclusions of the pleader as to embarrass, impede and prejudice the Respondent in the preparation of a proper defense thereto.

Respectfully submitted,

NICHOLS, GAITHER, BECKHAM,
COLSON & SPENCE,
Attorneys for Respondent
1111 Brickell Avenue
Miami, Florida

MOTION TO STRIKE AND DISMISS ARTICLES OF IMPEACHMENT

The Respondent, RICHARD KELLY, Circuit Judge in and for the Sixth Judicial Circuit of Florida, by and through his undersigned counsel moves the Senate of the State of Florida, organized as a Court of Impeachment, to strike the Articles of Impeachment, dismissing the proceedings, and discharging the Respondent upon the following grounds:

1. The Articles do not charge the Respondent with any high crime or misdemeanor in office, or with any impeachable offense.
2. The Articles do not purport to charge the Respondent with any act involving moral turpitude.
3. The Articles do not purport to charge the Respondent with corrupting his office for personal gain or advancement.
4. The Articles, individually and as a whole, merely constitute criticisms of acts taken by the Respondent while lawfully operating within the scope of the power vested in him by law, such criticism being of the type that could as well be made of the conduct of any trial judge, or of any citizen.

Respectfully submitted,

NICHOLS, GAITHER, BECKHAM,
COLSON & SPENCE
Attorneys for Respondent
1111 Brickell Avenue
Miami, Florida

MOTION FOR LEAVE TO WITHDRAW PETITION FOR CONTINUANCE

The Respondent, RICHARD KELLY, Circuit Judge in and for the Sixth Judicial Circuit of Florida, by and through his undersigned counsel respectfully moves for leave to withdraw his Petition for postponement of trial date heretofore filed in this cause, and shows in support of this motion as follows:

1. The Petition for postponement of trial was predicated upon the inability of the Respondent to engage counsel who would have the opportunity adequately to prepare the defense of the cause prior to the date heretofore set for the commencement of the trial herein, September 9, 1963

2. Despite the shortness of time allotted to the defense of the case, the Respondent has secured counsel to undertake the defense, counsel having rearranged other matters and trials which were set between now and September 9, 1963. Counsel and the Respondent himself, in view of the response of the President of the Senate to the Petition for continuance, do not wish to require the members of the Senate of Florida to journey to Tallahassee on September 9, 1963, for the purpose of passing upon a Petition to continue the trial which, if granted, would necessarily require a further session and an extreme inconvenience to the members of the Senate.

3. Counsel has determined to represent the Respondent herein despite the shortness of time available for the preparation of the cause, because of a strong feeling that the Respondent might otherwise be seriously prejudiced in undertaking his defense without counsel.

WHEREFORE, the Respondent respectfully moves for leave to withdraw the Petition heretofore filed.

NICHOLS, GAITHER, BECKHAM,
COLSON & SPENCE
Attorneys for Respondent
1111 Brickell Avenue
Miami, Florida

APPEARANCE, WAIVER AND ANSWER OF RESPONDENT

The Respondent, Circuit Judge Richard Kelly, hereby makes his appearance before the Senate of the State of Florida, organized and sitting as a Court of Impeachment, waives the reading of the Articles of Impeachment, and hearby answers and pleads, to each and every of the Articles, and Specifications thereunder, that he is not guilty.

NICHOLS, GAITHER, BECKHAM,
COLSON & SPENCE
1111 Brickell Avenue
Miami, Florida
MASTERSON AND LLOYD
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St. Petersburg, Florida
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Post Office Box 275
Port Richey, Florida
Attorneys for Respondent

RESPONDENT'S BRIEF IN SUPPORT OF MOTION TO DISMISS ARTICLES OF IMPEACHMENT

I.

THE PURPOSE OF THIS BRIEF

The Senate of the State of Florida, organized as a Court of Impeachment, is now charged with one of its most serious solemn responsibilities—the determination of whether a man chosen by the people to be their Circuit Judge should be denied that office and rendered a second-rate citizen forever. The purpose of this brief is to attempt to demonstrate that the charges against Circuit Judge Richard Kelly of the 6th Judicial Circuit, contained in the Articles of Impeachment which have been voted against him by the House of Representatives, are totally without merit both on their face and as a matter of fact, and that his Motion to Dismiss or to Strike the Articles should be granted. The Articles, or any facts which can be employed to support them, simply do not and can not justify what impeachment, in essence, means—both the frustration of the will of the people and the destruction of the reputation of a man whose only purpose, and whose only offense, has been to serve them.

II.

THE HISTORICAL BACKGROUND OF THESE PROCEEDINGS

On November 8, 1960, Richard Kelly was elected a Circuit Judge of the 6th Judicial Circuit, which comprises Pinellas and Pasco Counties. A provision of the Florida Statutes, Sec. 26.071 requires that one of the judges of this circuit *"shall reside in and be appointed or elected from Pasco County"* and it was to this "Pasco County judgeship" that Judge Kelly was elected. In the election, Judge Kelly defeated Circuit Judge O. L. Dayton, Jr., a Democrat. He was the first and, so far, the only Pasco County resident who is a registered Republican to be elected to public office.

Immediately after his election, Judge Kelly became the object of a continuing movement by a powerful group of Pasco County attorneys, who had opposed his candidacy and who had theretofore enjoyed unchallenged influence in the county:

1. They sought the assignment of another Circuit Judge to the county;
2. They secured the reappointment of the judge whom Judge Kelly had defeated, before Judge Kelly even took office;
3. They proposed the establishment of a Court of Record in the county to reduce the jurisdiction of the Circuit Court;
4. They petitioned for the rotation of Circuit Judges in the county;
5. They sought the passage of a Bill to include Pasco County in a neighboring circuit and to remove it from the 6th Judicial Circuit,

all without a referendum of the people and all for the purpose of removing Judge Kelly from their midst. Their last effort to change the circuit and, simultaneously to transfer Judge Kelly to Pinellas County without a referendum was frustrated when, after a public outcry against the Bill, the Senator from Pasco County concluded, as he stated in a telegram to its backers, that it would be *"morally wrong"* for him to support it. All else having failed, this small group of men instituted proceedings against Judge Kelly before the House of Representatives.

The House initially determined that there were no legitimate grounds upon which an impeachment could be based. The next day, however, although there had been no additional facts or testimony, or even debate, and apparently based only on newspaper reports, the House changed its mind and voted the same Articles which had already been rejected and which are now before the Senate.

III.

THE JUDGE'S RECORD

It is significant indeed that even the politically-inspired charges which are set out in the Articles of Impeachment do not, as they can not, remotely reflect upon the integrity of the Judge. His honesty, his courage, his industry and desire to be of service to the people of his circuit have been and remain above reproach. Nor do the Articles, though they attack some specific rulings of the Judge in the course of his judicial tenure, challenge his competence or judicial ability. Such a challenge would, on the basis of the record, be absurd. A search of the records of his circuit reveals that *appeals* have been taken in only 13 cases out of 1591 which were before Judge Kelly in both Pasco and Pinellas Counties.[1] In contrast, there have been far more appeals from the rulings of each of Judge Kelly's brother judges in the 6th Circuit, all of whom are able and conscientious, and none of whom has been impeached. Thus Judge "A" had 37 appeals, Judge "B" 40, Judge "C" 32, Judge "D" 37, Judge "E" 21—in the same period of time in which Judge Kelly has been on the bench.

IV.

THE ISSUES BEFORE THE SENATE

The basic issue before the Senate is one of the utmost importance to our Democratic system of justice. For the people have determined that Richard Kelly should be their Circuit Judge and have made known their desires that he shall continue to serve them. In passing upon the Articles of Impeachment, this body must determine whether they justify an interference with the basic doctrine that *the courts belong to the people.*

The process of impeachment has its foundation in the law of Great Britain, under which judges are appointed and serve *for life.* Federal judges, who have been made the subject of 8 impeachment trials, are appointed for life. In Great Britain, and under Federal law, therefore, impeachment is the only way to remove an unworthy judge. This is not the case in Florida, however, for under our Constitution, the *people* have been charged with the responsibility and the duty of safeguarding our courts. They discharge this duty simply by failing to re-elect a man whom they determine should not be re-elected.

In the determination of the question of whether the Articles are adequate to sustain the removal of Judge Kelly from office *without the submission of the case to the people,* Judge Kelly and those who represent him know that the members of the Senate, who sit in this body as both judges and jurors—as jurors in black robes—will judge the case with infinite fairness, and without regard to partisanship, based solely upon the law and upon the charges made against the Judge. Such a non-partisan approach would be in keeping with the tradition established by the voters of the 6th Judicial Circuit, who have made clear their desire that their judges shall be selected on merit alone and without regard to political considerations. Of the last five Circuit Judges elected by the people in the 6th Circuit, there were *three* Democrats and two Republicans, although non-judicial Pinellas County officeholders are almost exclusively Republican.

1. Because the judicial business in Pasco County does not require the presence of a full-time Judge, Judge Kelly has sat in alternate weeks in Pasco and Pinellas Counties. Of 882 cases assigned to the Judge in *Pasco County,* there have been but 4 appeals and only 9 in 709 cases in Pinellas County.

The Judge has filed Motions to Dismiss the Articles of Impeachment as a whole and to strike each Article individually as patently insufficient. These Motions are based primarily on the fact that the law concerning impeachment recognizes that only the most serious offenses, even if proven, may *ever* be made the basis of depriving the people of their right to choose their judges; and that the Articles before the Senate do not remotely appoach the statement of any such offense. Justice Terrell, in his brief prepared before the Holt trial, stated that the Senate must "determine whether or not the Articles of Impeachment state an *impeachable offense.*" Journal of the Senate, Court of Impeachment, July 8, 1957 to August 15, 1957, pg. 521. The Respondent urgently submits that the Articles do not state any such impeachable offense under the applicable law, and that his Motion to Dismiss the Articles should be granted.

Time and Expense of Trial:

By so doing, the Senate will avoid a trial which promises to last as long or longer, and cost more, than the Holt trial, which spanned a six-week period and cost the taxpayers $89,000. Since a trial would show only what the Articles of Impeachment already reveal—that the charges against Judge Kelly are frivolous and wholly without substance, this tremendous expenditure of time and unnecessary expense to the citizens of our state should be eliminated by granting the motion.

V.

ARTICLES DO NOT STATE IMPEACHABLE OFFENSE

Article III, Sec. 29 of the Florida Constitution provides that, among others, judges of the Circuit Court "shall be liable to impeachment for any *misdemeanor in office.*" The Articles of Impeachment do not even purport to accuse Judge Kelly of any act involving dishonesty, corruption, the use of his office for personal gain or of any act involving moral turpitude—they deal with alleged offenses of only the most trivial nature—but our Supreme Court has determined that the "misdemeanor in office" which is required to support the impeachment of an elected official means much more than a mere trivial error or mistake of law on the part of a public official. To the contrary, the Court held *In re Investigation of Circuit Judge,* Fla. 1957, 93 So. 2d 601, 605-606, that:

"... As applied to impeachment, *'misdemeanor in office may include any act involving moral turpitude which is contrary to justice, honesty, principles, or good morals, if performed by virtue or authority of office'*. 'Misdemeanor in office' is synonymous with misconduct in office and is broad enough to embrace any wilful malfeasance, misfeasance, or non-feasance in office."

The "moral turpitude" which is thus an inherent part of an "impeachable offense," in turn involves, as the Supreme Court held in *State v. Hollingsworth,* 108 Fla. 607, 146 So. 660, 661:

"*... the idea of inherent baseness or depravity in the private social relations or duties owed by man to man or by man to society.* Holloway v. Holloway, 126 Ga. 459, 55 S.E. 191, 7 L.R.A. (N.S.) 272, 115 Am. St. Rep. 102, 7 Ann. Cas. 1164. It has also been defined as anything done contrary to justice, honesty, principle, or good morals, though it often involves the question of intent as when unintentionally committed through error of judgment when wrong was not contemplated."

The law to like effect was summarized by the Supreme Court of Wisconsin in *State v. McCarthy,* 255 Wis. 234, 38 N. W. 2d 679 in determining that the circuit judge there involved had not been guilty of any offense involving moral turpitude:

"Moral turpitude, which is the only ground alleged as a basis for discipline in this case, has been defined as follows:

'Moral turpitude is an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.'

In re Henry, 1908, 15 Idaho 755, 99 P. 1054, 1055, same case 21 L.R.A., N.S., 207.

In 27 Words and Phrases, Perm. Ed., page 553 et seq., under the title 'Moral Turpitude' may be found many cases in which the meaning of that phrase has been considered. A number of quotations from the decisions of courts are given under the heading 'Disbarment Proceedings.'

In United States ex rel. Ciarello v. Reimer, D. C., 32 F. Supp. 797, it was held:

'The term ['moral turpitude'] is vague and indefinite but imports an act of baseness, vileness or depravity in private and social duties which a man owes to his fellowmen or to society in general contrary to the accepted and customary rule of right and duty between man and man.'

In the case of United States v. Carrollo, D. C., 30 F. Supp. 3, it was held that one may be guilty of a felony or infamous crime without being guilty of crime involving moral turpitude so as to authorize deportation.

In In re Jacoby, 74 Ohio App. 147, 57 N E. 2d 932, 936, it is held:

'Moral turpitude is anything done contrary to justice, honesty, principle or good morals. It is also defined as an act of baseness, vileness, or depravity in private or social duties which a man owes to his fellow men or to society in general contrary to accepted and customary rules of right and duties between man and man.' "

It is abundantly clear that nothing resembling any "inherent baseness or depravity" is even charged against Judge Kelly in this case. At most, the Articles *claim* that Judge Kelly made mistakes, even as every man and as every judge. But, as former Speaker of the House and present Circuit Judge Thomas D. Beasley stated in the course of his argument as a Manager of the House of Representatives in the Holt impeachment trial:

"We know that it is not an impeachable offense for a judge to at one time, or on several occasions, make a mistake." Journal of the Senate, supra, pg. 29.

The fact that the Articles of Impeachment do not in fact charge Judge Kelly with any "impeachable offense," as will be demonstrated in more detail by an analysis of each of the individual Articles, is shown also *by contrasting the charges they contain* with those which have been made the basis of successful impeachments in the past.

In the history of our country only four Federal judges have been impeached and removed from office by the Senate of the United States. All were convicted of charges of the most serious nature: (1) John Pickering in 1803 for habitual intemperance and drunkenness on the bench; (2) West H. Humphreys in 1863 for sedition and disloyalty to the Federal government during the war between the states; (3) Robert W. Archibald, a judge of the Commerce Court, in 1913 for, in effect, "influence peddling"; and (4) Judge Halsted L. Ritter in 1936 for corruption in office. Moreover, in the only impeachment case which has ever gone to trial in our state, Judge George E. Holt was accused (and acquitted) of grave charges involving improper awarding of fees, acceptance of favors from attorneys and personal misconduct. These cases illustrate the nature of the serious charges which are required to support an impeachment proceeding; Judge Kelly is accused of nothing of the kind.

It is for the people of the 6th Judicial Circuit, and not for this body, to pass upon those of Judge Kelly's actions which are challenged in the Articles of Impeachment. Those Articles do not charge him with a "misdemeanor in office" or with an impeachable offense and should be dismissed.

Bill of Particulars of No Effect

The Managers have filed, without leave of Court, a so-called "Bill of Particulars" which attempts to expand upon several of the charges mentioned in the Articles of Impeachment. For the purposes of considering this Motion to Dismiss, the law clearly establishes that such a Bill of Particulars does not strengthen in any way the charge to which it is directed. As is stated in 17 Fla. Jur., Indictments and Information, 63, p. 266:

"An accusation sufficient on its face cannot be made objectionable by a bill of particulars; *and where an indictment or information is insufficient on its face, it cannot be made valid by the service of a bill of particulars.* The latter document merely amplifies the indictment and limits the scope of the proof on the trial . . ." (Emphasis supplied)

The discussion in this brief will therefore primarily involve the statements in the Articles themselves. In any case, the "Particulars" add nothing of substance to the Articles. None of them can be sustained factually, and each of them is vigorously denied.

VI.

ARTICLES OF IMPEACHMENT DO NOT CHARGE IMPEACHABLE OFFENSE

Article I Does Not Charge Impeachable Offense

Article I (a).

Paragraph (a) of Article I of the Articles of Impeachment claims that Judge Kelly was guilty of a "misdemeanor in office" on the ground that he did:

"... Intentionally, illegally and for personal reasons and emotions, abuse the power and trust vested in him as said Circuit Judge in a tyrannical and oppressive manner and did violate the Code of Ethics governing conduct of judges in and out of the State of Florida, in that he, the said Richard Kelly, on or about March 26, 1963, in the case of State Road Department of Florida and Pasco County v. Aiken, Law Case No. 1753, in the Circuit Court, Sixth Judicial Circuit of Florida, in and for Pasco County, Florida, based on affidavits filed by attorneys Charlie Luckie, Jr., E. B. Larkin and Robert E. Clawson, in support of a suggestion of disqualification of said judge on the ground of bias and prejudice filed pursuant to section 38.10, Florida Statutes, 1961, by Charlie Luckie, Jr., as an attorney representing clients in said cause, with knowledge and advice that said affidavits and suggestion were privileged, were not the subject of contempt and were not contemptuous in nature under Florida law, did issue rules to show cause to said attorneys requiring them to appear on a day certain to show cause why they should not be found in criminal contempt of that court, and that he did thereafter, prior to the time specified for hearing on said rule to show cause, dictate and prepare an opinion whereby said attorneys were found in contempt though no order based on this opinion was ever entered because of the intervention and prohibition of the district court of appeal of the second district of the State of Florida. . . ."

The allegations contained in this paragraph do no more than accuse the Judge of making what the appellate court later ruled was a mistake concerning the Florida law of contempt. Such a mistake, as we have seen, is not and cannot be the basis of impeachment.

There is, of course, a statutory procedure under Section 38.10 of the Florida Statutes whereby a party may cause the disqualification of a trial judge on the ground of prejudice. The procedure involves the filing of supporting affidavits to the effect that the judge is biased and should be disqualified. The contents of affidavits filed in the cases mentioned in Article I (a) gave rise to Judge Kelly's issuing of rules to show cause why the attorneys who made them should not be held in contempt of court. While the paragraph states that Judge Kelly knew that the affidavits *could not* be made the basis for a contempt hearing and were privileged under the then-existing Florida law, this charge is flatly contradicted and, indeed destroyed by the fact that Florida law did and still does permit the finding of contempt for statements made in a disqualification proceeding. In the 1934 case of *State* v. *Peacock*, 113 Fla. 816, 152 So. 616, 617, the Supreme Court of Florida flatly stated that:

"... But even in cases of proceedings to invoke the disqualification of a judge, the power to punish for contempt exists where there is such uncalled for acts or wrongful conduct as amounts to an actual and direct obstruction to, or interference with, the administration of justice, and it is only with erroneous or abusive exercises of such power to punish for contempt that this court can be concerned when properly called on to grant relief. . . ."

In *Zarote* v. *Culbreath*, 150 Fla. 543, 8 So. 2d 1, the Supreme Court again approved *State* v. *Peacock, supra,* and stated that an affidavit filed in support of a motion to disqualify was not absolutely privileged. At 8 So. 2d 3, the Court stated that:

"... When we adhere to the enunciation contained in State v. Peacock, supra, we are brought to answer the question, whether or not the offending allegation was one which could reasonably result in 'actual and direct obstruction to, or interference with, the administration of justice.' Aside from this we may consider whether or not the alleged offending act was such as to reasonably result in bringing the Judge or the Court into contempt, disrespect or shame in the public eye. . . ."

And, in *State ex rel. Giblin* v. *Sullivan*, 157 Fla. 496, 26 So. 2d 509, the Supreme Court again squarely held that improper statements made in an affidavit of disqualification could be made the basis of a contempt charge.

It was on the basis of these Florida cases that Judge Kelly reached the judicial conclusion that he had a duty to issue the rules to show cause referred to in Article I(a). Thus, the charge that Judge Kelly knew he had no basis in law for his judicial course of action, itself demonstrates the transparency of this frivolous accusation.

It is, of course, correct that after the issuance of the rules the Second District Court of Appeal *subsequently* determined that the affidavits filed in support of the suggestion of disqualification were privileged and that the contempt proceedings would not lie. *Scussel* v. *Kelly*, Fla. App. 1963, 152 So. 2d 767. This ruling is now before the Supreme Court of Florida on a petition for certiorari. But even if the Second District were right, and Judge Kelly wrong, the law governing impeachment does not permit a mere legal error to be equated with a misdemeanor in office. The legal error, if any, was corrected in the proper forum—the Second District Court of Appeal.

Article I (a) complains also that Judge Kelly prepared an opinion concerning the contempt charge prior to the time of the scheduled hearing. The Judge simply did what any competent trial judge would do under similar circumstances—his homework. He did no more than prepare the law on this subject, give the benefit of his research to the attorneys involved, and reduce the conclusions he reached, as a result of this research, to writing. And it is interesting to note, that while Article I(a) complains of overpreparation, Article VII, accuses Judge Kelly of having "failed to

adequately inform and prepare himself on the law and procedure of causes and procedure before him. . . ." Those who prepared these Articles apparently want both to have their cake and eat it too.

As the charge itself states, the attorneys involved were never in fact held in contempt. Judge Kelly had, at the time of the prohibition proceedings brought by those who signed the objectionable affidavits, only scheduled a hearing for the purpose of making a judicial determination as to their contents. Article I(a), at most, claims that Judge Kelly made a mistake on the state of the Florida law. If this be "moral turpitude," there is no lawyer alive who is not equally guilty.

ARTICLE I (b)

In Article I (b), it is claimed that Judge Kelly should be divested of his office because he did:

"... On the 15th day of March, 1963, issue an order bearing the caption of said court, but bearing no style of any cause or proceedings pending in that court and not relating thereto, but for the prime purpose of requiring attendance at a discussion of a political question of moment in the community, ordering and requiring Charlie Luckie, Jr., an attorney and solicitor of that court, to appear before him at a time stated in said order and did cause the same to be served upon the said Charlie Luckie, Jr., by the sheriff of Pasco County, although said judge knew, or should have known in all reasonable competence, that such was and is an abuse of his public trust and exceeds the power of his office. . . ."

The order of March 15, 1963, sought the attendance of Charlie Luckie at a meeting of attorneys before the Judge to discuss the administration of justice in Pasco County, which had been seriously compromised by the series of theretofore unsuccessful political moves aimed at Judge Kelly. Every other attorney called for the same purpose appeared before the Judge voluntarily, and Mr. Luckie was not called for any reason personal to him.

The issuance of the order for Mr. Luckie to appear was not an abuse of power by Judge Kelly, but rather a necessary and proper exercise of judicial responsibility. For it is part of the inherent power of a judge of our state's highest trial court to do just what Judge Kelly did here—to attempt to control and further the orderly administration of justice within his circuit—and to bring an attorney before him in order to discuss that subject.

It is and has been established since the inception of our judicial system that all attorneys are officers of the court. Attorneys at all times are obliged to aid the Court in the administration of justice.

The Court's power and responsibility in this regard is universally recognized. Thus, it is stated at 14 Am. Jur., Courts, Sec. 171, that:

"... The 'inherent powers' of a court are such as result from the very nature of its organization and are essential to its existence and protection and to the due administration of justice. It is fundamental that every court has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction. . . ."

and in 48 C.J.S., Judges, Sec. 50, p. 1016, it is said that:

"... Generally speaking, it is within the powers and duties of a judge to take proper action in order to enforce the law and to promote justice. A Judge may of his own motion initiate an investigation for the correction of evils in the administration of justice, but he must proceed in an orderly and judicial manner, and, as discussed supra Sec. 46, he is not an adjunct of, or an investigating instrumentality for, other agencies of government. . . ."

The order of which Article I(b) complains was well within the inherent judicial power which these authorities recognize.

Moreover, it is well established in our state that a circuit judge retains continuing disciplinary control over lawyers within his circuit. These powers include, as the Supreme Court recently held in *Petition of Dade County Bar Ass'n,* Fla. 1959, 116 So. 2d 1, the actual initiation of investigative procedures directed to the attorneys who practice before the circuit bench.

The law of this state in this regard is in accord with that of virtually every other jurisdiction. Many of the cases so holding are collected in *DeKrasner* v. *Boykin,* Ga.App. 1936, 186 S.E. 701, 704-705, where it is said:

"... Among the many cases recognizing the inherent right of courts over attorneys, are People v. Harris, 273 Ill. 413, 112 N.E. 978; People v. Berezniak, 292 Ill. 305, 127 N.E. 36; State v. Raynolds, 22 N. M. 1, 158 P. 413; Chreste v. Commonwealth, 171 Ky. 77, 186 S.W. 919, Ann. Cas. 1918E, 122; State v. Edmundson, 103 Or. 243, 204 P. 619; In re Hilton, 48 Utah, 172, 158 P. 691, Ann. Cas. 1918A, 271; In re Bruen, 102 Wash. 472, 172 P. 1152; Wernimont v. State, 101 Ark. 210, 142 S.W. 194, Ann. Cas. 1913D, 1156; People v. Irwin, 60 Colo. 177, 152 P. 905; In re Durant, 80 Conn. 140, 67 A. 497, 10 Ann. Cas. 539; People v. Amos, 246 Ill. 299, 92 N.E. 857, 138 Am. St. Rep. 239; In re Wilson, 79 Kan. 450, 100 P. 75; In re Ebbs, 150 N.C. 44, 63 S.E. 190, 19 L.R.A. (N.S.) 892, 17 Ann. Cas. 592; State Bar Commission v. Sullivan, 35 Okl. 745, 131 P. 703, L.R.A. 1915D, 1218; In re Egan, 22 S.D. 355, 117 N.W. 874; Bar Association v. Casey, 211 Mass. 187, 97 N.E. 751, 39 L.R.A. (N.S.) 116, Ann. Cas. 1913A, 1226; Opinion of the Justices, 279 Mass. 607, 180 N.E. 725, 81 A.L.R. 1059; State ex rel. v. Reynolds, 252 Mo. 369, 158 S.W. 671; In re Bar Association, 109 N.J. Law, 275, 160 A. 809; Rubin v State, 194 Wis. 207, 216 N.W. 513. These citations are by no means exhaustive of the cases on the subject. *This visitorial power over the members of the bar is without question a necessary incident to a court's proper administration of justice of causes coming within its jurisdiction. . . .*"

Judge Kelly, thus, did no more than assert his authority over the administration of justice in his court and over the attorneys who appeared before him in order to protect the court and to further justice. Article I(b) on its face, claims only that the Judge exercised a judicial power it was for him to discharge. It cannot stand.

Article I (c)

Article I(c) states that Judge Kelly did:

"... On or about the 16th day of March, 1962, intentionally, illegally and for personal reasons and emotions, abuse the power and trust vested in him as said Circuit Judge in a tyrannical and oppressive manner and did violate the Code of Ethics governing conduct of judges in and of the State of Florida, by causing the Honorable Stanley C. Burnside, Clerk of the Circuit Court, Sixth Judicial Circuit of Florida in and for Pasco County, to come to the courtroom in the Pasco County Courthouse. That upon arrival at said court room said Stanley C. Burnside, being without previous knowledge of what was to take place, was taken into open court in which the said Richard Kelly, acting as Circuit Judge, subjected the said Stanley C. Burnside to an extended session of oppressive and threatening statements and questions, to his extreme harassment, discomfort and embarrassment. . . ."

This charge is patently frivolous. As a matter of fact—and the Article says nothing to the contrary—Mr. Burnside, the Clerk of the Judge's court, was called to appear before Judge Kelly to discuss in a formal and judicial atmos-

phere, complaints that the Clerk had directed toward the Judge's conduct on the bench. Under these circumstances, Judge Kelly had not only a right but an affirmative duty to summon the Clerk before him. This duty is outlined in Section 8 of the Code of Judicial Ethics which provides:

"Court organization—A Judge should organize the court with a view to the prompt and convenient dispatch of its business and he should not tolerate abuses and neglect by clerks and other assistants who are sometimes proven to presume too much upon his good natured acquiescence by reason of friendly association with him."

Judge Kelly is thus accused in Article I (c) of following the mandate of this Section of the Code of Ethics. Merely to state this proposition is to demonstrate its utter inadequacy to support a charge of "misdemeanor in office."

Article II Does Not Charge Impeachable Offense

Article II claims that Judge Kelly was guilty of impeachable conduct on the grounds that he did:

"(a) On the 26th day of February, 1963, at Zephyrhills, Florida, in person, use the name, standing and dignity of his high office in a speech before a partisan political group to assail and disparage the reputation of attorneys, elected and appointed public officials and legislative representatives of Pasco County. That aforesaid speech and public appearance was for a political purpose and was and is highly censurable and unbecoming of a circuit judge of the State of Florida, and by this conduct the said Richard Kelly violated the Code of Ethics governing the conduct of judges in Florida.

(b) Assist in the preparation and circulation of a petition relating to a political purpose in which nineteen (19) practicing attorneys of the Pasco County Bar Association were assailed as being undemocratic and un-American, thereby improperly lending the name, standing, dignity and persuasive capacity of his high office to such political purpose and unwarranted, slanderous assertions."

As the Bill of Particulars reveals, the speech and the petition of which this Article complains were concerned with the proposed legislation advocated by the group of Pasco County attorneys which would have eliminated the County from the 6th Judicial Circuit, transferred it to the 5th Judicial Circuit, and provided that Judge Kelly would serve not in Pasco, where he was elected to serve, but in Pinellas County. This matter was not a partisan issue, but was, on the other hand, vitally connected with the administration of justice in Pasco County, and indeed, with Judge Kelly's position itself.

Since this was true, Judge Kelly manifestly had not only the right but the *duty* to speak out against any such legislative enactment. The Article is based upon an erroneous conception of the injunction against "partisan politics" found in the Canons of Judicial Ethics, for it indiscriminately would condemn the activities of *any* judge for *any* "political" purpose, even though the word "political" used in this sense means, as defined in the Unabridged Webster's Dictionary:

"1. Of or pertaining to polity, or politics, or the conduct of government, *referring in the widest application to the judicial, executive, and legislative branches; of or pertaining to, or incidental to, the exercise of the functions vested in those charged with the conduct of government,* relating to the management of affairs of state; as, political theories."

Under this Article's view of "political" activities therefore our judiciary would be effectively muzzled in *any* effort to improve or even to safeguard our system of government. But there is nothing either in the Code of Judicial Ethics or in the general rules of judicial propriety which prevents a judge from speaking out on some *non-partisan* governmental issues. Section 28 of the Code of Judicial Ethics provides as follows:

"*Partisan* politics—While entitled to entertain his personal views of political questions, and while not required to surrender his rights or opinions as a citizen, it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes the active promoter of the interests of one political party as against another. He should avoid making political speeches, making or soliciting payment of assessments or contributions to party funds, except as required by law, the public endorsement of candidates for political office and participation in party conventions.

He should neither accept nor retain a place on any party committee nor act as party leader nor engage generally in partisan activities."

The plain impact of this section is to forbid a judge from actively engaging in "partisan politics"; it simply does not require that a judge surrender the right to involve himself in an issue, such as the circuit change, which affects all the citizens of the county in which he sits, as well as the Judge himself and the very office to which he was elected. Judge Kelly offered to discuss the circuit change at any public meeting, Democratic as well as Republican, to which he was invited.

Article II significantly does *not* charge Judge Kelly with any *partisan* activity, and it should be a matter of deep concern to the Senate that a member of our judiciary has been impeached for speaking out upon a vital public issue. To impose a gag here would seem to require a similar ban on such activities as those of members of our highest court in discussing the encroachment of Federal judicial power in many areas of state concern and of personal belief and conviction.

Judges *do* have the right to attempt to safeguard the interests of the public on matters which involve the administration of justice within their jurisdiction. Article II claims only that Judge Kelly attempted to do just that. It alleges not even an impropriety on the Judge's part, let alone an action upon which he can lawfully be impeached.

Article III Does Not Charge Impeachable Offense

Article III vividly illustrates the triviality of the grounds upon which it is now sought to remove an elected official from office without the vote of the people. It contends that the Judge was guilty of a misdemeanor in office, in that he did:

"On or about the 6th day of April, 1962, and thereafter on the 20th day of April, 1962, in the case of Mountain v. Pinellas County in the Circuit Court of Pinellas County Chancery No. 61540, recklessly and arbitrarily exercise the powers of said office by entering and issuing orders lifting and reinstating a temporary injunction prepared by counsel benefited by such orders, without notice or communication to counsel for the parties adversely affected, thereby embarrassing counsel for said parties and seriously abridging the rights and remedies of the parties thereto."

This accusation is demonstrably frivolous. No more need be said than to point out that Judge Kelly's rulings in the case referred to in the Article were actually affirmed by the Second District Court of Appeal in the case of *Mountain* v. *Pinellas County*, Fla.App. 1963, 152 So. 2d 742—a fact concerning which the Article neglects to advise the Senate. The Appellate Court found that Judge Kelly's rulings had been correct. With regard to the "lifting and reinstating" of the

injunction complained of in the Articles, the Court said merely, at 152 So. 2d 746, that:

"A preliminary injunction was granted restraining further expansion of the county's water system. Later the injunction was vacated on the county's motion, but thereafter was reinstated pendente lite with the consent of the county...."

Judge Kelly's activities with regard to the injunction were, of course, entirely blameless. He had held a hearing concerning a motion to vacate an injunction at which he heard argument of both counsel. He reserved ruling at the time of the hearing and later considered briefs on the issue. When Judge Kelly arrived at his decision, prevailing counsel was called upon to prepare and submit an Order vacating the injunction. This action, as anyone connected with any trial court in this state knows, is a routine procedure—the Article "charges" nothing more.

Moreover, one wonders how unsuccessful counsel could have been simultaneously prejudiced by Judge Kelly's actions in both lifting *and* reinstating the injunction. Apparently those who drafted the Article, however, seek to have it both ways.

The Article, at best, reveals only the backwash of an actively-contested lawsuit in which the Judge ruled against a now-complaining party, and was affirmed in so doing. No circuit judge in Florida would remain on the bench if such a "charge" could be made the basis of a successful impeachment. Were this proceeding not of such a serious nature, the Article could be dismissed as laughable.

Article IV Does Not Charge Impeachable Offense

Article IV claims Judge Kelly did:

"Cause friction between himself and the other circuit judges of the Sixth Judicial Circuit of Florida, by disputing with them the assignment of cases generally in the circuit and the assignment of other judges of the circuit *to preside over any cases in Pasco County,* although the assignment of cases to particular circuit judges is the function and duty of the presiding judge of the circuit and not the said Richard Kelly."

Stripped of its unessentials, this Article claims only that Judge Kelly discussed—and even argued—with his fellow judges concerning the assignment of cases within Pasco County and the 6th Judicial Circuit.

The Article, like several others, seeks to condemn activity in which the Judge had a perfect right to engage.

Every Circuit Judge—including Richard Kelly—is charged with the administration of justice in the operation of the courts within his circuit. The discussion of assignment of cases and the division of work within the circuit is part and parcel of the discharge of the responsibilities of that office. Moreover, Judge Kelly had a responsibility under the Statute, F.S. 26.071, pursuant to which he was elected, and which requires that there be a resident circuit judge in Pasco County—to do just what the Article claims he was wrong in doing, discuss "the assignment of *other* judges of the circuit to preside over any cases in Pasco County."

Disagreement as to the assignment of cases can not be equated to judicial misconduct. Indeed, one is forced to observe that it requires two to carry on either a discussion or an argument—and if Judge Kelly were guilty of an impeachable offense by "disputing" an issue, so too would the person with whom he was doing the disputing.

A discussion, and even a human argument, about the assignment of judicial business within the circuit to which a judge has been elected can not be a proper basis of impeachment. Article IV is without merit.

Article V Does Not Charge Impeachable Offense

Article V charges Judge Kelly with two acts of "misconduct in office", both of which, on their face, fail to state impeachable offenses, and further are without substantive merit.

Article V (a)

Article V, Paragraph (a) alleges that Judge Kelly did:

"Allow, aid or condone the alteration of public records in a cause pending before him in the case of Hayward v. Hayward in the Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pasco County, Florida, Chancery No. 8556, on certain pleadings filed therein despite the official record to the contrary, and his own previous findings of fact, by holding that signatures appearing on a pleading at a later hearing had been on the pleadings at the previous hearing covered by the record, which authorization was and is a violation of the criminal law of the state of Florida."

The Statute, F.S. 839.13, to which reference is made in the paragraph, provides in pertinent part:

"839.13. Falsifying records

If any judge, justice, mayor, alderman, clerk, sheriff, coroner, or other public officer, or any person whatsoever, *shall steal, embezzle, alter, corruptly withdraw, falsify or avoid,* any record, process, charter, gift, grant, conveyance, or contract, or any paper filed in any judicial proceeding in any court of this state . . . *or shall forge,* deface or falsify any document or instrument recorded, or filed in any court, or any registry, acknowledgment, or certificate, or *shall fraudently alter,* deface or falsify any minutes, documents, books, or any proceedings whatever of or belonging to any public office within this state; or if any person shall cause or procure any of the offenses aforesaid to be committed, or be in any wise concerned therein, the person so offending shall be punished by being imprisoned not exceeding one year or by fine not exceeding one thousand dollars."

Manifestly, Paragraph (a) of Article V does not allege facts sufficient to charge a *fraudulent, corrupt* or *criminal* falsifying of public records. Nowhere is it charged, in this specification or elsewhere, that Judge Kelly, in any of his conduct at any time or at any place, was possessed of criminal, corrupt or fraudulent intent, nor could such intent in fact be charged. Such an allegation is, of course, a requirement of an accusation based, as is Article V (a), upon a violation of a penal statute, F.S. 839.13.

Our Supreme Court has repeatedly held in numerous cases involving the sufficiency of indictments or informations, that the requisite criminal intent *must be charged* on the face of the accusative pleadings. The principle of those cases clearly is applicable to this proceeding, in which a charge of misbehavior in office is expressly predicated upon a criminal statute.

In *Beasley* v. *State,* 158 Fla. 824, 30 So. 2d 379, 380, the Supreme Court reversed a conviction for utterance of a false and forged narcotics prescription, and quashed the indictment, upon the ground that no criminal intent or knowledge was alleged or proved. In the course of its opinion, the Court said:

"... The charging part of the information is: 'that W. A. Beasley of the County of Orange and State of Florida on the 23rd day of April in the year of our Lord one thousand nine hundred and forty-six in the County and State aforesaid, *did unlawfully utter a false and forged prescription for a narcotic drug and did unlawfully obtain 48 half-grain morphine sulphate tablets by means of said forged prescription.*' The motion to quash should have been granted.

This information is brought under paragraph (4) of Section 398.19, Florida Statutes 1941, same F.S.A., which is: 'No person shall make or utter any false or forged prescription or written order for any narcotic drug.' *Generally, it must be alleged and shown that (a) the instrument was forged; (b) that the defendant knew the instrument was false and forged and (c) that it was uttered with an intent to injure or defraud another.* See Harrell v. State, 79 Fla. 220, 83 So. 922; Oglesby v. State, 156 Fla. 481, 23 So. 2d 558. This is true because it is elementary that every material element of the offense must be charged and proved.

The third element above stated is not necessary to be alleged and proved in a case coming under the provision of the statute above stated, but the elements (a) and (b) are necessary in a case of this sort and unless those elements of the offense are charged in the information or indictment there is no offense charged. See Goodson v. State, 29 Fla. 511, 10 So. 738, 30 Am. St. Rep. 135.

The information in the instant case failed to meet this requirement. *Unless we hold this to be the law, then we would have to hold paragraph (4) of Section 398.19, supra, invalid because it would be susceptible of imposing a penalty upon one entirely innocent of any criminal knowledge or intent.*" 30 So. 2d at 380.

Similarly, in *Sheffield* v. *State,* Fla. 1956, 90 So. 2d 449, 452, the Supreme Court, in passing upon the sufficiency of a criminal information, said:

"Where an act of the Legislature condemns certain conduct but requires the existence of a specific intent, *then such intent should be alleged in the information and supported by proof at the trial.* Turner v. State, 100 Fla. 1078, 130 So. 617; Rosin v. Anderson, 155 Fla. 673, 21 So. 2d 143."

Accord: *Roe* v. *State,* 96 Fla. 723, 119 So. 118, 120 (Information charging accused as an accessory before the fact, to statutory crime of burning a building with intent to defraud insurer; deficient in absence of allegation of criminal intent; information quashed); *Goodson* v. *State,* 29 Fla. 511, 10 So. 738, 740 (Indictment charging accused with utterance of a forged instrument; deficient in absence of allegation of criminal intent to defraud and to convert proceeds of instrument; indictment quashed). As a matter of law then, no violation of the criminal statute by Judge Kelly has been charged.

Nor may an impeachable act, *not amounting to a crime,* be found on the face of this specification, *for in the absence of an accusation of fraudulent intent—which could under no circumstances be made or proved here—there simply is no moral or ethical wrong alleged on the part of Judge Kelly.*

The key to the insufficiency of the charge is found in the statement that Judge Kelly erred in his *"holding"* that signatures had *been* on the pleadings in question at a prior hearing. In short, Judge Kelly is accused only of rendering an erroneous, *judicial determination* on a collateral issue in a bitter lawsuit, and if in fact he did make an erroneous decision, he certainly was not mysteriously transformed into an accomplice to a criminal falsification of public records.

To the contrary, the specification (and the actual facts) demonstrate only an abundance of caution on the part of a chancellor in the course of a hotly-disputed equity case. Judge Kelly simply refused, in a cause pending before him to attribute an act of forgery or alteration of the pleadings to one of the parties and her counsel.

Finally, it cannot be denied that the party who now complains of Judge Kelly's conduct in the Hayward case *ultimately prevailed* in the cause; it is therefore difficult to ascertain for what reason this charge was made. The outcome of the litigation, as nothing else, shows Judge Kelly's judicial disinterest in the outcome of the case, and the complete lack of any corrupt motive or purpose on his part.

Indeed, if the judicial act, referred to in Article V (a), constitutes impeachable conduct, few circuit judges in our state could remain on the bench, for it is a common custom to permit attorneys, who inadvertently omit to sign pleadings prior to filing, to cure the technical defect by signing *after* filing. No prejudice to anyone results, and obviously corruption is not involved. Similarly, no prejudice or corruption is alleged or shown in this charge against Judge Kelly.

Article V (b)

Article V, Paragraph (b) charges Judge Kelly with a "misdemeanor in office", and claims that he did:

"In the case of Case v. Case, Chancery No. 63737 in the Circuit Court of Pinellas County, Florida, unlawfully and unjustly hold one Alex D. Finch, a practicing attorney of Pinellas County, in contempt of court and fined him the sum of two hundred dollars ($200.00), and did, on the next day or the following day thereafter, rescind the order of contempt and imposition of the fine and request of the said Alex D. Finch that he, Judge Kelly, be permitted to destroy the record of the case insofar as it pertained to the contempt matter."

No impeachable conduct is alleged. All that is pleaded here, even at the worst, is: (a) an erroneous contempt ruling by Judge Kelly, (b) a re-evaluation of his own ruling and a self-reversal—in the highest tradition of his judicial office, and (c) a *request* to the attorney involved that the reporter dispense with a pointless typing of the minutes of the moot and academic contempt proceedings.

It need hardly be re-emphasized that a mere erroneous ruling by a judge during the course of a pending case does not amount to impeachable conduct. And this principle applies to erroneous *contempt* rulings as well as to any others. Indeed, the complex law of contempt is a fertile field for error by judges of our circuit courts.

In every one of the following decisions, among many others, our Supreme Court has found abuses of the contempt power and has reversed the trial court, or prohibited it from proceeding further with a contempt matter: *State* v. *Thomas,* 128 Fla. 231, 174 So. 413; *Ex Parte Edmondson,* 68 Fla. 53, 66 So. 292; *Ex Parte Bostick,* 102 Fla. 995, 136 So. 669; *Ex Parte Earman,* 85 Fla. 297, 95 So. 775; *Ex Parte Turner,* 73 Fla. 360, 74 So. 314; *State* v. *Petteway,* 131 Fla. 516, 179 So. 666; *State* v. *Davis,* 83 Fla. 422, 91 So. 267; *Smith* v. *Whitfield,* 38 Fla. 211, 20 So. 1012; *State* v. *Rodes,* 124 Fla. 288, 168 So. 249; *Palmer* v. *Palmer,* 36 Fla. 385, 18 So. 720; *Giblin* v. *State,* 158 Fla. 490, 29 So. 2d 18; *Lee* v. *Bauer,* Fla. 1954, 72 So. 2d 792; *Satterfield* v. *Satterfield,* Fla. 1949, 39 So. 2d 72; *Yandell* v. *Yandell,* Fla. 1948, 33 So. 2d 869; *Ex Parte Maser,* 149 Fla. 771, 7 So. 2d 445; *Young* v. *Miami Beach Improvement Co.,* Fla. 1950, 46 So. 2d 26; *South Dade Farms* v. *Peters,* Fla. 1956, 88 So. 2d 891; *Alger* v. *Peters,* Fla. 1956, 88 So. 2d 903; *Gay* v. *McCaughan,* Fla. 1958, 105 So. 2d 771.

Many of the judges to whom these rulings of the Supreme Court have been directed, were among the finest and most reputable judges and legal scholars in the legal history of our state. In none of the cases was an erroneous contempt adjudication ever equated with impeachable conduct, nor was the integrity, ability, or right to hold office of the erring judge even questioned. How then, can it seriously be contended that a circuit judge, with a record second to none, is guilty of a misdemeanor in office, simply because he renders what is claimed to be an erroneous contempt decision, and then, after reflection, overrules himself?

Nor can the alleged simple *request* by Judge Kelly that

the typing of the minutes of contempt proceedings be dispensed with, amount to impeachable conduct. Those minutes added nothing to the merits of the pending litigation, for when the contempt order was rescinded, the contempt proceedings were a matter of complete irrelevance to anyone or anything. As a matter of fact, the *request* was made of the attorney involved by Judge Kelly, so as to save the client the attendant expense of paying for the transcription of a meaningless segment of the litigation. The key to the insufficiency of the charge lies in the statement that Judge Kelly made a "request,"—not an "order" or a "demand." No surreptitious or clandestine conspiracy to destroy a court record can conceivably be found in this paragraph. Judge Kelly simply asked the attorney involved if he were agreeable to dispensing with the typing—and no more. In fact, no record of any kind was ever destroyed.

When viewed in proper perspective then, Article V (b) alleges a trivial, unimportant incident, which in no way can support a serious accusation of misdemeanor in office.

Article VI Does Not Charge Impeachable Offense

Article VI charges Judge Kelly with "misdemeanor in office" in that he did:

"In the case of State v. Sinclair in the Circuit Court of Pinellas County, Florida, in which the said Sinclair previously had been indicted by the grand jury of Pinellas County for the crime of murder in the first degree, grant a writ of habeas corpus upon petition of the defendant, Sinclair, without notifying the prosecuting attorney of the Sixth Judicial Circuit of Florida as required by section 27.06, Florida Statutes, 1961."

Florida Statutes, Section 27.06, provides in relevant part:

"Notice of the application for the writ of habeas corpus *shall be given* to the prosecuting attorney of the court wherein the statute under attack is being applied, the criminal law proceeding is being maintained, or the conviction has occurred."

The complete lack of even a color of merit to this accusation becomes obvious by a mere reading of the relevant statute, which simply *does not* charge *the judge with the duty of furnishing the prosecutor with the requisite notice.* The statute only requires that "notice" be given to the prosecutor, upon the filing of such an application, *which means simply that the petitioner, or his attorney, and not the Court,* must inform the prosecutor.

But the Article is defiicient in an even more basic regard. It is not charged that the prosecuting attorney did not in fact receive the requisite statutory notice, nor could such a charge be made, since the prosecutor was in fact informed of the application.

The Article on its face, then (1) amounts to no more than an accusation that Judge Kelly failed to perform a duty *which was not his to perform,* and (2) does not allege that the requirements of the statute were not met by the person or persons actually charged with their performance, or by anyone else. The Article is simply an absurdity.

Article VII Does Not Charge Impeachable Offense

Article VII charges Judge Kelly with six specifications of "misconduct in office", none of which support such an accusation and none of which are definite and certain enough so as to enable Judge Kelly properly to defend himself. Each of the specifications, therefore, is insufficient on its face to state an impeachable offense. They allege that Judge Kelly did:

"(a) Unduly and unnecessarily interject his own personality into the trial of cases before him, indulge in unnecessary, embarrassing and belligerent examination of witnesses and parties; engage in undue and unnecessary arguments with counsel for parties appearing before him, in the presence of their clients and the public generally, and otherwise has failed to adequately inform and prepare himself on the law and procedure of causes and proceedings before him, all of which impeded the expeditious disposition of litigation before him adding greatly to the expense of litigation in his court, all of which was and is in violation of the Code of Ethics governing the conduct of judges in Florida.

(b) Indulge in partisan politics.

(c) On many and diverse occasions discuss litigation pending before him with parties themselves out of the presence of their attorneys of record.

(d) Conduct and mis-manage his office as circuit judge so as to cause confusion by wilfully and deliberately alienating the attorneys practicing before him in Pasco County, Florida.

(e) Flagrantly violate certain provisions of the Code of Ethics governing judges as adopted by the Supreme Court of Florida.

(f) Commit other and further actions of misconduct and misdemeanors in office."

Article VII (a)

Article VII, Paragraph (a) contains three vague and obscure allegations:

1. That Judge Kelly Unduly Interjected His Own Personality into the Trial of the Case Before Him.

The so-called "Particulars" to this charge show that, out of the plethora of cases tried before him, Judge Kelly on only *two* occasions, unduly interjected himself into such trials, "so that the trial of the cause was unduly extended." It is not even alleged that Judge Kelly prejudiced the cause of any of the litigants or that he committed reversible error in his conduct. Indeed, in neither of the two cases was an appeal by any party even taken from any of Judge Kelly's rulings. Certainly this legislative body should leave it to the courts to decide whether a judge, acting in his judicial capacity, was warranted in acting as he did—and certainly prejudicial error on his part in the course of a trial is not a predicate for impeachment. The fact that Judge Kelly's alleged interjection of his personality into two trials, "unduly extended the length" of such trials, patently is not sufficient to show such grave misconduct, or demonstrate such moral turpitude as to justify impeachment.

2. That Judge Kelly Indulged in "Unnecessary Embarrassing and Belligerent Examination of Witnesses and Parties"; and Engaged in "Undue and Unnecessary Arguments with Counsel . . . in the Presence of Their Clients."

The "Particulars" set forth seven instances in which Judge Kelly allegedly argued with, engaged in disputes with, or threatened to hold in contempt, parties, attorneys, witnesses, and on one occasion the court reporter.

In not one of these instances is it alleged that an act of judicial error was committed. And in not one of these cases was an appeal taken by either party. If indeed on these few occasions, Judge Kelly was in fact unnecessarily belligerent—a human trait of which our greatest judges are often possessed—this hardly calls for an extra-judicial proceeding.

The heat of litigation and trial, as all attorneys know, is filled with opportunity for the flaring of tempers, and thus there is substantial body of law in our state in which the most reputable jurists who ever sat on the Bench have been reversed for just the type of conduct charged to Judge Kelly. In none of these cases is any reflection cast upon

the erring judge's integrity or capacity. No appellate court in our state, in any of these cases, has ever even suggested that such conduct might justify impeachment.

Thus, in *Williams* v. *State*, Fla. 1962, 143 So. 2d 484, the Supreme Court of Florida reversed a conviction after trial of murder in the first degree in a case over which the Honorable John U. Bird presided. One of the bases of the reversal was Judge Bird's unjudicial conduct toward defendant and his counsel. In the course of its opinion, the Court said in relevant part:

"*. . . It is next contended that the trial court's demeanor and attitude toward defendant and his counsel at the trial militated against defendant receiving a fair trial.*

[10-12] *This is a serious charge and delicate one to treat. It is all the more so because the judge who presided at the trial is one of the best nisi prius judges in this country.* The lawyer who represented defendant is also one of the better trial lawyers at the bar. We canonize the courthouse as the temple of justice. There is no more appropriate justification for this than the fact that it is the only place we know where the rich and poor, the good and the vicious, the rake and the rascal—in fact every category of social rectitude and social delinquent—may enter its portals with the assurance that they may controvert their differences in calm and dispassionate environment before an impartial judge and have their rights adjudicated in a fair and just manner. Such a pattern for administering justice inspires confidence. The legend on the seal of this court—"sat cito sirecte" (soon enough if right or just)—embossed in the floor of the rotunda of this building, encourages devotion to such a pattern. Litigation guided by it makes the courthouse a temple of justice. *When judges permit their emotions or the misapplication of legal principles to shunt them away from it, they must be reversed.* The judge must above all be neutral and his neutrality should be of the tough variety that will not bend or break under stress. He may ask questions to clarify the issues but he should not lean to the prosecution or defense lest it appear that his neutrality is departing from center. The judge's neutrality should be such that even the defendant will feel that his trial was fair. In the trial of a capital case the judge's attitude or demeanor may speak louder than his words; in fact it may speak so loud that the jury cannot hear what he says. *This is particularly true when his emotions instead of his judgment get in the driver's seat. We do not say that this was the case here, but when he repeatedly upholds the proffer of evidence relating to incidents at the Blue Grass Market over objections of defendant, and then admonishes counsel for defendant that if he again accused him of taking over the prosecution of defendant he would cite him for contempt, the imposition of such a hurdle was at least ground for counsel to think that his neutrality was veering entirely too far to the left of center.* It follows that the judgment appealed from must be reversed for a new trial . . . (3) *For the reasons pointed out, there was merit to the contention that the trial judge's attitude militated against a fair trial. Allen* v. *State*, Fla. 1952, 62 So. 2d 70; *Diecidue* v. *State*, Fla. 1961, 131 So. 2d 7, and *Leavine* v. *State*, 109 Fla. 447, 147 So. 897. . . ." 143 So. 2d 488-489.

Likewise, in *Giglio* v. *Valdes*, Fla. App. 1959, 114 So. 2d 305, a judgment after trial in a negligence case over which the late Judge Henry C. Tillman had presided, was reversed, in part because of the emotional conduct of that great jurist. In its opinion, the Appellate Court said:

". . . We have carefully examined this record. We find nothing whatsoever that suggests that the attorney for appellants had been obnoxious, or impertinent or in any fashion disrespectful to the trial judge, who much to the regret of the Bench and Bar of the State, has passed away since the trial of the instant case. *We deem it appropriate to interpolate that he enjoyed a reputation for kindliness and considerateness of others that was completely inconsistent with the handling of the instant case. We can perhaps justifiedly suspect that for some personal reason not reflected by the record he failed in the instant case to maintain his customary judicial equilibrium. We cannot permit this regrettable factor to steer our judgment away from a full recognition of appellant's rights as shown by the record.*

We think it is unnecessary to point out that the trial of a lawsuit imposes mutual obligations of respect and understanding on the lawyers and the trial judge. The jury has a right to look to the judge for guidance, for the maintenance of the dignity and decorum essential to the proper administration of justice, and, in short, as the personification of fairness and equality before the law. Unless the judge keeps the contest in its proper bounds the jury is apt to regard the matter as a sort of chess game in which the lawyers bring out all of their horses, and castles, bishops and pawns in a studied effort to checkmate each other. *When the trial gets out of bounds, or when the judge demonstrates his ill-feeling and animosity toward one of the lawyers, it is not the lawyer who suffers. Rather it is his client who is being deprived of the high level of justice that is the handiwork of a fair, temperate and impartial mediator in the judge's chair.* 53 Am. Jur., Trial Sec. 75, p. 75.

When the thinking of a jury is prejudiced against a lawyer the probability is that the lawyer's client suffers accordingly. *It appears to us that when the trial judge in effect accuses a lawyer of being a sharp trickster or as engaging in unfair and improper conduct in the manner in which he handles the case, he is reaching out toward the ultimate in embarrassing the lawyer before the jury and in prejudicing the client's cause accordingly.* Cone v. Cone, Fla. 1953, 68 So. 2d 886. *This is especially so when, as here, there was no justification whatever for the castigation and the sharply conflicting evidence could be swayed in one direction or another by the evident attitude of the trial judge. Remarks of the judge during the course of a jury trial can have much more influence on the result than the actual evidence presented.* See Gendzier v. Bielecki, Fla. 1957, 97 So. 2d 604.

Taking all of these elements into consideration we have the view that the intemperate remarks of the judge in the instant case cannot be written off as harmless. On the other hand, it appears to us that they might well have persuaded the jury unduly in favor of the appellee. *Under the circumstances shown by the record we conclude that the ends of justice require a new trial because of the error committed.* Ward v. Hopkins, Fla. 1955, 81 So. 2d 493. . . ."
114 So. 2d 306-307.

There are many other cases in Florida passing upon the propriety of judicial conduct during the heat of litigation. Thus, there is nothing unique about the charges leveled against Judge Kelly, even if they were justified, as they are not, and few circuit judges could survive if they were impeached whenever they lost their patience or temper with parties or attorneys appearing before them. The remedy for this type of conduct is by appeal. The conduct alleged does not amount to "misdemeanor in office."

3. That Judge Kelly "Failed Adequately to Inform and Prepare on the Law and Procedure of Causes and Proceedings Before Him."

It is claimed that on three occasions Judge Kelly was inadequately prepared. Nowhere is it shown how, why or in what manner he was unprepared, or what more he could have done. And it should be noted that the gist of

this accusation is in direct conflict with the charge found in Article I, to the effect that Judge Kelly prepared an opinion prior to hearing. At any rate this accusation that the Judge was unprepared in a grand total of three cases ont of the hundreds upon which he ruled, fails utterly to establish a charge of laxity or incompetence. No such charge could be sustained, in view of the Judge's record, which shows that fewer appeals have been prosecuted from his rulings than from those of any other judge in his circuit. Were the Judge chronically "unprepared," the record would be far different.

Article VII (b)

Article VII (b) charges that Judge Kelly "indulged in partisan politics." The very Canon of Judicial Ethics which is involved does not, as we have seen, prohibit the surrender of all political opinions and, in fact, affirms a judge's right to entertain his own political views. The charge that Judge Kelly "indulged" in partisan politics is meaningless in the absence of specific allegations, so that it can be determined whether he actively and publicly supported a partisan political party candidate or issue, or merely retained his personal convictions.

Article VII (c)

Article VII (c) claims that Judge Kelly "on many and diverse occasions" discussed litigation pending before him with parties out of the presence of their attorneys.

Two instances in which Judge Kelly discussed proceedings with parties out of the presence of their attorneys are specified in the particulars. But it remains a mystery precisely what judicial duty or canon Judge Kelly allegedly violated. The respondent is aware of no canon or rule of judicial conduct or ethics which forbids him from discussing a proceeding with a party in the absence of his attorney. Nor is any corruption or conspiracy alleged. It is difficult to ascertain how this accusation can even amount to an error, much less an impeachable offense.

Article VII (d) (e) (f)

Article VII (d) (e) and (f) charge that Judge Kelly "Mismanaged his office, alienated attorneys; flagrantly violated certain provisions of the Canon of Ethics; and committed other and further actions of misconduct in office."

These allegations as well as the preceding ones are so nebulous, transitory and uncertain that they do not permit Judge Kelly adequately to prepare to defend himself. No specific dereliction of judicial duties, concrete example of belligerent conduct, violations of specific provisions of the Canon of Ethics or any other misconduct in office are alleged. Such generalities are not sufficient to state impeachable acts, for they fail to specify of what Judge Kelly is being accused.

It is the established law of Florida—and law, logic and fair play walk hand in hand in this regard—that a charge must allege every material fact and essential element of the purported misconduct with precision and certainty. In short, an accused must adequately be informed of the nature of the accusation with such definiteness as will enable him to prepare his defense.

The leading case in Florida, establishing this requirement of certainty and specificity as opposed to mere generalities, is *Sullivan* v. *Leatherman*, Fla. 1950, 48 So. 2d 836. In that case, the sheriff of Dade County was indicted by the grand jury for the alleged common law crime of "neglect of duty and incompetency in office." Our Supreme Court, in a carefully worded opinion held that the indictment, comprised as it was of generalities and vague, indefinite accusations, wholly failed to state a crime. In language directly applicable to the general and vague charges made against the Respondent in this proceeding, the Supreme Court said:

> "So it follows that if the State relies on an indictment charging official misconduct or failure of official conduct in any respect, whether common law or statutory, *the offense must be charged in direct and specific terms and that it was wilfully or corruptly done or omitted. Count one, in fact none of the counts meets the simple academic requirements of precise pleading, neither do they charge that petitioner wilfully or corruptly failed to perform any duty imposed on him by law or that he acted corruptly in the performance of any duty imposed on him.* Ex parte Amos, 94 Fla. 1023, 114 So. 760 . . . *The charge must be made in such positive and direct terms as will put the defendant on notice of what he is charged with and enable him to prepare his defense . . .*
>
> Summarized count one charges that in 1949 and 1950 petitioner was guilty of neglect of duty in office in that he knowingly permitted the gambling laws of the State of Florida to be violated in Dade County in an open and notorious manner, on a wide scale, yet he refused or neglected to take any effective steps to prevent said violations. Respondent admits that this count is fatal if tested by State or Federal law, but he contends that it is sufficient as a common law indictment for misdemeanor. This notwithstanding it measures up to none of the dimensions for a good indictment prescribed in the preceding paragraphs. *Neither could the best lawyer in Florida define from its content what duty of the sheriff was being corruptly performed . . . To recognize such an indictment would amount to an abandonment of every safeguard that the constitution and the statute placed about fair and impartial trial and permit one charged with crime to be tried on charges predicated on nothing more than idle rumor, flying saucers and current gossip. Our constitution does not permit criminal justice to be so administered.*
>
> Then there is an historical aspect to these constitutional and statutory safeguards that we dare not overlook. The grand jury had its origin early in the history of English law. When first conceived it was the accuser and the trier of public offenders. At the time this country was settled its duties were delimited and it was strictly an informing or accusing body and as previously stated, the Federal and each State Constitution made its accusation a prerequisite to fair trial, the reason being that in England when conflicts arose in defining the powers of the King and the rights of his subjects, the grand jury acted as a stopgap to prevent persecution of the subject by the stooges of the King. It was generally regarded as refuge against cooked up, unfounded or unfair prosecutions in the name of the crown. Conflicts between the citizen and the government have been rare in this country but the grand jury was integrated into our system of law for purposes not materially different from those for which it was employed in England and it would be idle to contend that without it or even with it in the hand of a designing prosecutor, it could not be used to avenge personal political and other hatreds without number. *So it necessarily follows that when the Founding Fathers made indictments essential to prosecution, they had no scatter gun pattern in mind, they shot with a rifle directed to the bullseye. A good indictment must still approach that pattern. It cannot be grounded on street rumor, common gossip or what 'they say'. . .*" 48 So. 2d 838, 839.

Similarly, in *Robinson* v. *State*, 113 Fla. 854, 152 So. 717, the Supreme Court reversed a conviction based upon a vague and indefinite accusation. The facts, reasoning and applicable law were set forth in the Court's opinion as follows:

> "This case is before us on certiorari to a judgment of the circuit court of Bay County, Fla., affirming judgment of conviction of the petitioner, which conviction was had upon an affidavit in the following language, to wit:

'Before me, County Judge, in and for said County, personally came E. L. Bush, who being by me duly sworn, says that on the 16th day of March, A.D. 1932, in the County, aforesaid, one W. S. Robinson then and there being did unlawfully operate a certain motor vehicle on the public highways of Bay County, Florida, in a careless and reckless manner, contrary to the statute in such cases made and provided and against the peace and dignity of the State of Florida.'

Motion was made to quash the affidavit on two grounds. First, 'The said affidavit is vague and indefinite.' Second, 'Said affidavit does not charge the defendant with any crime or offense punishable under the laws of Florida.'

We think the affidavit should have been quashed on the first ground of the motion. The language of the affidavit is so vague and indefinite as not to apprise the defendant of the act or conduct for which he is being prosecuted. The affidavit charges a mere conclusion that the defendant operated the motor vehicle on the public highways of Bay County, Fla., in a 'careless and reckless manner.' From the allegations of this affidavit alone, it was impossible for defendant to know what act or circumstance constituted the alleged infraction of the law. If the charge as stated was sufficient, the state might have proceeded to prove that he was operating an automobile without sufficient brakes, or that he was operating an automobile at a rate of speed which at the time and place constituted a careless and reckless operation of the automobile, or it might have proved that he did not maintain control of the car by keeping in touch with the steering wheel and other controlling parts of the car. We might name many other specific acts which would constitute careless and reckless conduct in driving an automobile.

A defendant has the right to know from the language of the charge against him what conduct on his part is the basis of that charge.

For the reason stated, the judgment should be quashed." 152 So. at 717.

In *Cooper* v. *City of Miami*, 160 Fla. 656, 36 So. 2d 195, the Supreme Court restated the rule in a particularly eloquent opinion in the following words:

"It is so well settled as to need no citation of authority that every person accused of crime is entitled to be informed of the nature of the accusation against him. This right requires that the charge be stated with such clearness and necessary certainty as to apprise the accused of the charge he will be called on to meet at the trial, so that he will not be misled in the preparation of his defense and so that he will be protected after conviction or acquittal from substantial danger of a new prosecution for the same offense. It is equally well settled that an accused is entitled to have the charge lodged against him proved substantially as laid, and that he cannot be prosecuted for one offense and convicted and sentenced for another, even though the offenses are of the same general nature or character, or carry with them the same penalty. See Penny v. State, 140 Fla. 155, 191 So. 190. There are well-established principles for the protection of the innocent that govern the framing of criminal accusations and the introduction of proof to sustain them . . ."
36 So. 2d at 196.

Applying the principle of these cases to this impeachment proceeding, it becomes evident that the accusation in Article VII does not meet the requirements of law. Judge Kelly has been charged with misconduct in terms so general as to prohibit him from adequately preparing to defend them. And, certainly, if there were in fact more specific acts of misconduct on his part, they would have been alleged in this Article. Each paragraph of the Article is insufficient on its face as a matter of procedure and without merit as a matter of substance.

Article VIII Does Not Charge Impeachable Offense

Article VIII charges Judge Kelly with misdemeanor in office in that he did:

"In his official capacity, intentionally, shrewdly, and ruthlessly and in abuse of his official trust, as evidenced by the acts heretofore set out in Articles I through VII hereof, each of which is hereby realleged and reaffirmed and made a part of this article as though set out in full herein, embark upon and maintain a continuous course of conduct calculated to intimidate and embarrass the members of the Pasco County Bar Association, the officials of Pasco County, the officials of certain cities therein, and certain other attorneys, in the presence of their constituents, clients and before the public generally.

Wherefore, the said Judge Richard Kelly was and is guilty of misbehavior and misdemeanor in said office."

This Article adds nothing to the charges already set forth and by its very terms is a mere reallegation or repetition of those charges. It is nothing more than a conclusion that, based upon the cumulative effect of all of the other allegations, an impeachable course of conduct has been shown. But, the sum total of the seven preceding meritless Articles, encompassing as they do trivial matters, or at the most, errors by Judge Kelly in various judicial rulings, cannot be utilized to demonstrate a separate and distinct misdemeanor in office. *The sum total of seven zeroes is still zero.* On its face, this Article is as insufficient and without merit, as are the seven preceding articles upon which it is based.

VII.

CONCLUSION

1. The Articles of Impeachment do not charge the Judge with any misdemeanor in office, or with any impeachable offense.

2. The Articles do not charge the Judge with any act involving moral turpitude.

3. The Articles do not purport to charge the Judge with bribery, graft, dishonesty or with corrupting his office for personal gain or advancement.

4. The Articles merely constitute unjustified criticism of acts taken by the Judge while lawfully operating within the scope of the power vested in him by law, such criticism being of the type that could as well be made of the conduct of any trial judge, or of any citizen.

It is impossible to believe that, on the basis of such charges,

1. The people could be deprived of their Constitutional right to choose their own judge, and

2. A man whose record of service has been so outstanding could be impeached and thus both deprived of his judgeship and permanently forbidden from ever again holding any local, state or federal public office.

For these reasons, it is respectfullly submitted that the Motion to Dismiss the Article should be granted, and the consideration of Judge Kelly's conduct in office be re-

turned to those to whom it properly belongs—the people of the Sixth Judicial Circuit.

Respectfully submitted,

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BRIEF OF THE BOARD OF MANAGERS ON THE PART OF THE HOUSE OF REPRESENTATIVES

IN RE: IMPEACHMENT OF CIRCUIT JUDGE RICHARD KELLY

BRIEF

I.

PURPOSE OF THIS BRIEF

The purpose of this brief will be to show that a Motion to Dismiss or a Motion to Strike does not lie to Articles of Impeachment which have been duly found and voted by the House of Representatives when such Articles are presented to the Senate by the Board of Managers on the part of the House of Representatives.

II.

HISTORICAL BACKGROUND

As is said in Gniest, History of England, Vol. II, p. 18—"The right of impeachment begins in 51, Edward III, in a time of great administrative abuses under a King in his dotage". It seems that during those days friction and indecision occurred between the House of Commons and the House of Lords as to where the power of impeachment should repose. During and shortly after this period, it was resolved that the House of Commons should have the exclusive right to impeach any peer or commoner of their choice and that the House of Lords should have the exclusive power to try the impeachment of such peers or commoners. Thus began the Court of Impeachment with which we here involve ourselves. This instrument of removal from office was instituted to touch those officers in high places with broad powers which could be used in an oppressive manner against their people.

Upon the adoption of our Constitution of the United States in 1787, this vehicle of protection for the people from the abusive use of the powers vested in officers in high places was brought into our Constitution. These provisions will be found in Section 2, Article I and Section 3, Article I of the Federal Constitution. With the history of England and the Federal Constitution as a back-drop, the State of Florida, in its Constitution of 1838 adopted similar provisions for impeachment. In the Constitution of 1848, the State of Florida enacted into its Constitution provisions substantially identical to those found in the Federal Constitution. Section 29, Article III, Constitution of Florida. These provisions of the Florida Constitution provide that the "sole" power of impeachment rests in the House of Representatives and that all impeachments shall be tried by the Senate.

III.

ARGUMENT

It is respectfully submitted on behalf of the Board of Managers that the doctrine of division of powers between the House of Representatives and the Senate has existed from the beginning of the doctrine of impeachment, with the House of Representatives having the "sole" power to bring impeachment articles and with the Senate having the "sole power to try the articles as presented by the House of Representatives. Section 2(5), Article I and Section 3(6), Article I of the Federal Constitution provide as follows:

ARTICLE I, Section 2(5):

"The House of Representatives shall chuse their speaker and other officers; and shall have the sole power of impeachment."

ARTICLE I, Section 3(6):

"The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present."

and Section 29, Article III of the Constitution of the State of Florida provides as follows:

ARTICLE III, Section 29:

"IMPEACHMENT OF OFFICERS.—The *House of Representatives shall have the sole power of impeachment;* but a vote of two-thirds of all members present shall be required to impeach any officer; and all impeachments shall be *tried* by the Senate. When sitting for that purpose the senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the Senate present. The Senate may adjourn to a fixed for the trial of any impeachment, and may sit for the purpose of such trial whether the House of Representatives be in session or not, but the time fixed for such trial shall not be more than six months from the time articles of impeachment shall be preferred by the House of Representatives. The Chief Justice shall preside at all trials by impeachment except in the trial of the Chief Justice, when the Governor shall preside. The Governor, Administrative officers of the Executive Department, Justices of the Supreme Court, and Judges of the Circuit Court shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust or profit under the state; but the party convicted or acquitted shall nevertheless be liable to indictment, trial and punishment according to law." (Emphasis supplied)

In all of the research done on behalf of the Board of Managers, it is respectfully submitted that in none of the cases examined, either in England or the United States, has this division of powers been broken by the Senate or House of Lords, summarily dismissing Articles of Impeachment, which have been voted by the House of Representatives of House of Commons. The following are representative examples of the treatment given by courts such as yours, both in Federal and State impeachment matters. In the trial against William W. Belknap, late Secretary of War, in the United States Senate, First Session of the 54th Congress, Mr. Manager Lord, in answer to a question of whether Belknap, having resigned, could not now be impeached, said:

"Your committee do not fine that any rules of pleading, as observed in the inferior courts, have ever obtained in the proceedings of the high court of Parliament, in a cause or matter in which the whole procedure has been within their original jurisdiction. Nor does your committee find that any demurrer or exception as of false or erroneous pleading had been ever admitted to any impeachment in

Parliament as not coming within the form of the pleading."

The Senate of the United States in that matter eventually agreed to the following order:

"ORDERED, That W. W. Belknap have leave to answer the articles of impeachment within ten days from this date; and that in default of an answer to the merits within ten days, by respondent, to the articles of impeachment, the trial shall proceed as upon a plea of not guilty.":

In the case of In Re Impeachment of N. Hunt in the State of Massachusetts, tried in 1794, there was no Motion to Dismiss; In Re Impeachment of George M. Wickcliffe in the State of Louisiana, tried in 1870, there was no Motion to Dismiss; In Re Impeachment of John Vinlal in the State of Massachusetts, tried in 1800, there was no Motion to Dismiss; In Re Impeachment of William Seeger, State Treasurer of Minnesota, tried in 1873, the State Treasurer therein plead guilty with a Disclaimer of Corrupt Motives; In Re Impeachment of David Butler, Governor of Nebraska, tried in 1871, there was no Motion to Dismiss recorded; In the case of In Re Impeachment of Henry Bates, in the State of California, in 1957, there was no Motion to Dismiss, as the State Treasurer resigned before articles were adopted by the assembly; *In Re the Impeachment of George A. Hastings, Attorney General of the State of Nebraska, tried in 1893, there was no Motion ot Dismiss; and In Re the case of Judge Barnard in the State of New York where the counsel for the respondent applied to the court for leave to file a demurrer or leave to move to quash certain articles of impeachment, the court "refused the request and required the defendant to plead to the merits, . . ."* (Emphasis supplied)

It is true, that such motions as a Motion to Dismiss and a Motion to Strike as submitted herein, when submitted in the matter of In Re Impeachment of a Circuit Judge of the Eleventh Judicial Circuit of Florida. However, these motions were argued and disposed of *without objection* by the Board of Managers. Journal of the Senate, Court of Impeachment, 1957. These Managers suggest that this was erroneous.

As will be noted above, the Constitution of Florida states in the first sentence of Section 29, Article III, *"the House of Representatives shall have the sole power of impeachment,***"*. The case law of Florida interprets those provisions and points squarely to the proposition that the Constitution of Florida means exactly what it says. In the case of In Re Investigation of a Circuit Judge of the Eleventh Judicial Circuit of Florida, 93 So. 2d 601, (1957) the Supreme Court of Florida was called upon to discuss methods for removal of officers of the judiciary and therein an investigation was made. In the opinion written, former Chief Justice Terrell, on page 603 said as follows:

"The House of Representatives is clothed with the sole power to impeach and all impeachments are tried by the Senate. Since the House of Representatives is clothed with the sole power of impeachment, *it necessarily follows that it has the power to determine whether the charges brought against one amount to a 'misdemeanor in office' as contemplated by the Constitution.*" (Emphasis supplied)

In further explaining the procedure of impeachment, Justice Terrell, on page 609 of that case, said as follows:

"We do not think it proper to determine at this time whether the charges against Petitioner constitute a 'misdemeanor in office'; that will be determined by the House of Representatives if impeachment proceedings are brought. Eight charges are laid against Petitioner; they are broad in scope but how many of them may constitute a 'misdemeanor in office' in the judgment of the House of Representatives, it would not be possible for us to say at this time."

It is respectfully submitted that this positive authority sustains the Constitution of Florida in its plain, unequivocable mandate, that the House of Representatives shall have the sole power of impeachment. Justice Terrell again expressed this view when he set down "QUESTIONS THAT WERE SETTLED" in the Holt trial of July 15, 1957, recorded in the Journal of the Senate, August 15, 1957, page 523. Justice Terrell said as follows:

"Even if the Article of Impeachment when considered alone could be challenged, the Bill of Particulars cured the defects and that the trial respondent was accorded every constitutional guaranty."

IV.

CONCLUSION

It is respectfully submitted on behalf of the Board of Managers on the part of the House of Representatives, that the House of Representatives has the sole power to determine whether the charges brought against Richard Kelly constitute a "misdemeanor in office" extending to the Senate power to hear testimony, sit in judgment and otherwise try the charges as brought by the House of Representatives. The Board of Managers on behalf of the House of Representatives respectfully submit that any other conclusion would not be appropriate in that should the Senate have the right to challenge and summarily dismiss those charges brought by the House of Representatives, then in effect, the sole power of impeachment would be in the Senate of Florida and any action taken on the part of the House of Representatives would be a nullity. Certainly the precedent of history does not lead to this conclusion. The awesome power of impeachment should rest, and the responsibility be divided, between the two bodies representing the people of the State of Florida. Any other conclusion would nullify the dual provisions of the Constitution of the State of Florida.

Respectfully submitted,

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RESPONDENT'S BRIEF IN OPPOSITION TO MANAGERS' OBJECTIONS TO, AND MOTION TO STRIKE RESPONDENT'S MOTION TO DISMISS

This cause is before the Court on the Managers' objection to the Respondent's motion to dismiss the Articles of Impeachment. Respondent contends that authority and precedent demonstrate that this Court has the right, authority and duty to entertain and to rule upon his pending Motion to Dismiss the Articles of Impeachment.

I.

SENATE'S AUTHORITY UNIVERSALLY RECOGNIZED

It has been universally agreed that this Court has the authority and duty to pass upon the pending Motion to Dismiss. Chief Justice Drew recognized this fact in the Foreward to the Senators' Deskbook provided at the commencement of this trial.

On Page 1 of the Deskbook, Chief Justice Drew stated:

"This deskbook has been prepared for your information

and use in the impeachment trial of Honorable Richard Kelly, scheduled to commence at 11:00 o'clock A.M. on September 9, 1963. It contains copies of all pertinent pleadings except respondent's answer which is required to be filed at or before the commencement of the trial. In view of the pending motions of respondent directed to the sufficiency of the articles of impeachment, it is probable that this answer of respondent will not be filed *until the Senate rules on these pending motions. In the event the Senate denies these motions,* and the answer is filed, a copy will be furnished each member of the Senate for inclusion at an appropriate place in this deskbook."

This statement clearly recognizes that the Senate must, in fact, rule upon the pending motion.

Indeed, it may be assumed that even the Board of Managers, until the last minute, did not question this Court's authority to rule upon the motion. Their present contention, which amounts to a motion to strike the Respondent's Motion to Dismiss, was *never filed* with the Secretary of the Senate, although the Respondent's motions were served upon them on August 12, 1963, and even though this Court, on June 14, 1963, adopted the following rule:

"That it be further ORDERED that all preliminary motions directed to the Articles of Impeachment and all other preliminary matters shall be filed with the Secretary of the Senate on or before *August 16, 1963.*" Senate Journal, June 14, 1963. P. 1905.

Moreover, this Rule itself recognizes the power of the Senate to pass such a motion. The

"preliminary motions directed to the Articles of Impeachment"

to which this order refers, obviously mean just the type of motion to which the Board of Managers now objects.

The reason why the Chief Justice, the Board of Managers and this Senate itself has recognized the propriety of the motions to dismiss is an obvious one. *In the only preceding impeachment trial in the history of our state, that of Circuit Court Judge George E. Holt in 1957,* the Senate heard argument and passed directly upon and voted upon a motion to dismiss the entire proceedings. While the Managers claim that the present issue was never raised in the HOLT trial, it is clear that the Senate asserted its *jurisdiction* to pass upon the motion. The Managers' argument is unsound; they claim that this Court does not have the power or jurisdiction to pass upon the Motion to Dismiss, and such a jurisdictional issue must be recognized by a Court, even if it is not objected to by counsel. Thus the HOLT trial is square authority for this Court's jurisdiction over the pending motion.

There can be no reason for permitting Judge Holt to challenge the sufficiency of the Articles of Impeachment by motion, and denying the same privilege to Judge Kelly.

As Chief Justice Terrell recognized in his brief, filed before the HOLT trial and re-adopted by Mr. Chief Justice Drew to guide the Senate in the law and procedure, the Senate has a right to determine

"Whether or not the Articles of Impeachment state an impeachable offense."

The Motion to Dismiss permits the Senate to make just this determination.

II.

PRECEDENTS IN OTHER JURISDICTIONS

Though we need not go outside of Florida to substantiate the power of this Court to rule upon the Motion to Dismiss, there is ample authority for this procedure in cases arising in other states and before the Senate of the United States.

Counsel for the Managers stated that "they could find no authority" for the Senate's consideration of such a Motion to Dismiss. Research after the Senate adjourned revealed the following cases in which motions like this one were extensively *considered* and *argued,* and then *voted* upon by the *Court of Impeachment*:

TRIAL OF WILL J. FRENCH, SENATE OF KANSAS, 1934;

TRIAL OF ROLAND BOYNTON, SENATE OF KANSAS, 1934;

TRIAL OF GEORGE M. CURTIS, SENATE OF NEW YORK, 1872;

TRIAL OF HORACE G. PRINDLE, SENATE OF NEW YORK, 1872;

TRIAL OF JUDGE CARLOS S. HARDY, SENATE OF CALIFORNIA, 1929;

TRIAL OF HALSTED L. RITTER, SENATE OF THE UNITED STATES, 1936 (Motion to Quash Individual Articles);

TRIAL OF SHERMAN PAGE, SENATE OF MINNESOTA, 1878;

TRIAL OF HAROLD LOUDERBACH, SENATE OF THE UNITED STATES, 1933 (Motion to Quash Individual Articles);

TRIAL OF WILLIAM SULZER, SENATE OF NEW YORK, 1913 (433 pages of argument on Motion to Dismiss);

TRIAL OF JOHN F. COWAN, SENATE OF NORTH DAKOTA, 1911;

TRIAL OF SENATOR WILLIAM BLOUNT, SENATE OF THE UNITED STATES, 1797 (Motion to Dismiss granted).

In virtually *every impeachment trial* in the United States discovered by counsel for the respondent, a motion to dismiss was argued, heard, considered and decided by the Senate involved.

Another significant indication of the fact that a motion to dismiss articles of impeachment *does in fact lie,* is found in one of the leading treatises on the subject, Simpson, Treatise on Federal Impeachments, 1916. The treatise collects the law and precedents surrounding Federal impeachments, and also submits "Suggested Senatorial Rules of Procedure" to be followed by the Senate in future impeachment trials. One of the proposed Rules provides as follows, at p. 216 of the Treatise:

If the respondent desires to be heard in person or by counsel, he must plead guilty to or answer each of the articles of impeachment separately, *but he may accompany his answer with a motion to dismiss any or all the articles.* The answer to each article must be complete in and of itself, without reference to the answer to any other article, and must be a concise statement of the facts only, without any argument. *The motion to dismiss must also be complete in and of itself, must concisely state the reasons why the senate should dismiss the articles and must contain no argument.*

The learned author thus clearly recognizes that a Motion to Dismiss the articles may be filed and considered by the Senate, and provides Rules by which it may be done. The present motion to dismiss is in the form which these proposed Rules provide. See also 9 Hughes, Federal Practice, Sec. 7260, P. 653-654, which also recognizes the existence

of a "demurrer" to articles of impeachment. The present Motion to Dismiss is the direct equivalent of such a "demurrer."

III.

POWER OF COURT TO DISMISS OR QUASH CRIMINAL INDICTMENT

The undoubted power of this Court to pass upon the Articles of Impeachment is directly analogous to the right of a Court to consider, on a motion to quash or dismiss, the sufficiency of an indictment or an information in a criminal proceeding, such as this one.

It has long been recognized that impeachment proceedings are criminal or quasi-criminal in nature. For example, The Supreme Court of Florida, in IN THE MATTER OF THE EXECUTIVE COMMUNICATION filed the 9th day of November, A.D. 1868, 12 Fla. 653, 675, (1868), Chief Justice E. M. Randall recognized that:

> "The process of impeachment is likened in the books to the proceedings by indictment in the courts of criminal jurisdiction. . . ."

Chief Justice Terrell's brief states that the process of impeachment "still retains some of its criminal attributes."

Moreover, as the brief also states, an impeachment trial "is unquestionably judicial."

The law is summarized in 43 Am. Jur., Public Officers, Sec. 178, p. 29, where it is said that:

> *"The [impeachment] proceeding is likened to a proceeding by indictment in a court of criminal jurisdiction. It is in its nature highly penal, and is governed by rules of law applicable to criminal prosecutions."*

There can be no question that in criminal cases, or in the criminal-like proceedings involved here, a Court may, and must, pass upon the sufficiency of the *indictment,* (or Articles of Impeachment) to state a ground upon which the defendant may be prosecuted. The authorities so holding are collected at 17 Fla. Jur., Indictments and Informations, Sec. 77, p. 284, where it is said:

> "The modes of testing the sufficiency of indictments and informations are two in number. Errors, defects, and irregularities are normally questioned by way of motion. . . ."

Also see STATE v. BRUNO, Fla. 1958, 104 So. 2d 588, 107 So. 2d 9.

A grand jury has the sole power to return a criminal indictment; but a Court can and must determine the legal sufficiency of that indictment. So, too, under our system, only the House of Representatives may vote articles of impeachment, but only *this* Court of Impeachment may and must determine its sufficiency. This Court is just like any other Court which must determine the adequacy of the pleadings or charges upon which its jurisdiction is based. *Criminal* courts must determine whether the indictment or information is good, a *civil* court must determine whether the complaint is good, and this *Court of Impeachment* must determine whether the Articles of Impeachment are good. The Motion to Dismiss asks this Court to pass upon this issue, and this Court has the power, right and duty to do so.

IV.

CONCLUSION

It is respectfully submitted that this Court has the responsibility and should hear and determine the Respondent's Motion to Dismiss the Articles of Impeachment.

Respectfully submitted,

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MOTION TO DISMISS

The Respondent, RICHARD KELLY, by his undersigned attorneys, respectfully moves the Senate, sitting as a Court of Impeachment, for a dismissal of the Articles of Impeachment heretofore filed against the Respondent, and as grounds therefor says:

1. The evidence and testimony adduced by the State in support of the Articles fails to establish beyond and to the exclusion of a reasonable doubt an impeachable offense committed by the Respondent.

2. The evidence and testimony adduced by the State is insufficient as a matter of law to establish the validity of the Articles of Impeachment.

3. The Articles of Impeachment are insufficient on their face.

4. The evidence and testimony adduced by the State does not establish that the Respondent was guilty of any misdemeanor in office, or any act or omission, involving moral turpitude.

5. The State has utterly failed to produce evidence concerning certain charges in the Articles of Impeachment.

6. The evidence and testimony adduced by the State does not establish anything more than honest mistakes or errors of law which are reviewable by the Appellate Courts of the State of Florida.

7. Each individual Article merely constitutes criticism of acts taken by the Respondent while lawfully operating within the scope of the power vested in him by law, such criticism being of the type that could as well be made of the conduct of any trial judge in the State of Florida.

Respectfully submitted,

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